

UDC 343.45  
DOI: 10.33270/01211203.7

## Admissibility and Evidence of the Obtained Results of the Conducted Psychophysiological Research with the use of a Polygraph

Oleksandr I. Motliakh\*

National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine

■ **Abstract.** The purpose of the study is to highlight relevant issues related to the admissibility and evidentiary value of the results of psychophysiological studies using a polygraph. The methodological tools were selected in accordance with the set goal, the specific features of the object, and the subject of research. The methodological basis was the general dialectical scientific method of real phenomena and their connection with the theory and practice of using the results of psychophysiological research using a polygraph, and special research methods, namely: system analysis, comparative-legal, system-structural, and forecasting methods. Scientific originality. The study substantiates the scientific opinion on the essence of the positions of admissibility and evidence of the results of psychophysiological studies using a polygraph, which, together with other data, can serve as evidence in open criminal proceedings. The scientific position that the basis for the certainty of psychophysiological research using a polygraph is formed by such components as accuracy and certainty is argued. Those are not identical concepts. Each of them has a certain content load, which together ensures the verification of the results of research conducted using a polygraph. In turn, certainty correlates with the reliability and accuracy of the information data obtained due to the quality of research performed by a polygraph examiner, primarily in the issue of conducting a forensic psychophysiological examination using a polygraph. The above-mentioned components provide admissibility as a property of proof that characterises it from the standpoint of the legality of the source of factual data (information), methods of obtaining and forms of fixing factual data. Evidence is considered admissible if it is obtained legally. Given that conducting a forensic psychophysiological examination using a polygraph is an orderly activity that provides for compliance with all procedural requirements, the results obtained may have the status of procedural evidence

■ **Keywords:** polygraph; polygraphology; polygraph specialist; expert; special knowledge; forensic psychophysiological examination

### ■ Introduction

The results of psychophysiological studies using a polygraph, in particular, expert ones, often cause a discussion among theorists and practitioners regarding the question of their certainty and evidentiary value. Such activity is not a clearly defined procedure in terms of their use, in particular, in criminal proceedings. The lack of legislative tools that would fully regulate the use of the polygraph in Ukraine and the results obtained with its help question the quality of research

conducted by polygraph examiners to recognise them as full-fledged evidence in conjunction with other materials obtained that have evidentiary value [1-3].

The relevance of the subject under study is in the need to analyse the positions of certainty and evidence of the obtained results of psychophysiological studies/examinations conducted using a polygraph, which is based on the theoretical foundations of key components that form the basis for their procedural recognition. The problems of this issue are not properly reflected in the scientific findings of polygraph researchers. A substantial number of scientific papers devoted to the development of the polygraph with an emphasis on the certainty and evidentiary essence related to the use of this scientific-technical device [4; 5]. However, it should be recognised that a number of important aspects in this area of research have not yet been resolved.

### ■ Suggested Citation:

Motliakh, O.I. (2021). Admissibility and evidence of the obtained results of the conducted psychophysiological research with the use of a polygraph. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 7-15. doi: 10.33270/01211203.7

■ \*Corresponding author

■ Received: 01.07.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

*The purpose of the study* is to conduct a systematic analysis of theoretical and practical aspects of the certainty and evidentiary essence of the results of research conducted using polygraphs. The presentation of the main content of this issue is based on highlighting the scientific positions of foreign and Ukrainian polygraph examiners and criminologists on the development of polygraph science and its key foundations.

The following tasks were set to achieve this goal:

- outline the theoretical components that form the basis for the certainty of research results conducted using a polygraph;
- analyse the positions of certainty in relation to the evidence-based results of such examinations;
- formulate practical recommendations for recognising the results of psychophysiological studies conducted using a polygraph as one of the possible evidence in criminal proceedings.

## ■ Results and Discussion

Accuracy, certainty, and reliability as the most important practical components of evidence should be the key to conducting any research, in particular, instrumental using a polygraph. Certainty is often equated with accuracy, but this does not seem entirely appropriate. The technique cannot be more effective than certain, because certainty overlaps reliability [6]. However, the method can have guaranteed certainty without high accuracy, although the opposite is not possible. Certainty implies the accuracy of obtaining research results in relation to similar previously conducted ones in equal conditions and in the presence of the same tools, methods, and techniques applied to them. That is, regardless of the number of repeated studies using a polygraph in establishing the same circumstances of the case, event, or fact, an identical final result must be obtained. The certainty of the obtained results of such studies embodies its quality. Any deviations, discrepancies, or opposites in the results of the study give grounds for recognising polygraph information data as unverified, and therefore questionable for making appropriate decisions, in particular, procedural ones. To improve the quality of the results of psychophysiological studies conducted using a polygraph, the requirements for manufacturers of these devices in the issue of certainty of “lie detectors” have been substantially tightened. Now the accuracy indicators of the latest models of computer polygraphs reach 95-97 per cent. Modern polygraphs began to meet the requirements stated for them, which substantially increased their rating in terms of trust on the part of users of these devices and customers in providing polygraph services. Thus, polygraphs and the results of special studies obtained with their help may correlate with the results of other conventional types of research or forensic examinations. This allows for asserting their

high quality, which guarantees the certainty of both the device itself and the specific research methods used by polygraph specialists, which have been tested by time and practice [7]. Relevant in this matter is the statement made by foreign polygraph examiners J. Reid and F. Inbau, who argued that the polygraph has a degree of accuracy that even outstrips modern types of evidence that appear in courts in criminal and civil cases [8]. From the standpoint of theory, this seems fair, but in practical terms, unfortunately, the situation is different. The modern popularisation of the polygraph as an ultra-precise scientific-technical device has provided the possibility of its systematic application in law enforcement activities, in particular, in criminal proceedings, although it has not resolved the main controversial issue regarding the evidentiary value of the results obtained with its help as an independent source of evidence in open criminal proceedings. This applies to the practice of judicial proceedings in most countries where there are facts of using a polygraph and the results of such studies in criminal procedural evidence, and cases of refusal to recognise them as independent evidence. Such evidence is used almost as irrefutable in Japan, Canada, India, Poland, Lithuania, and Romania, but even there it is mainly used in civil proceedings. There are known cases of using the obtained information data from polygraph tests as evidence in the Republic of South Africa. But Croatia categorically abandoned this practice. But England and Germany, which were wary of instrumental psychodiagnoses of a person, began to actively use the polygraph and the results of psychophysiological studies obtained with its help. Regarding the United States of America as a leading country in the operation of polygraph technologies, the conclusion of a polygraph examiner is not used as evidence in American criminal proceedings, while the US Supreme Court recognises the method of psychophysiological research using a polygraph. That is, the issue is debatable, it should be resolved carefully, considering the specific features of this specific type of activity, in which the key place belongs to the certainty of the results obtained. The interpretation of certainty is based on the content of establishing the objective reality (truth) of the results of the psychophysiological examination conducted using a polygraph and considering the constant improvement of devices in this area and the introduction of new methods for checking information coming from a person, the level of certainty of the obtained results increases [9].

Certainty correlates with the reliability and accuracy of the results obtained, which is achieved due to the quality of research performed by a polygraph examiner, primarily in the aspect of conducting an expert examination. Within its framework, most questions arise because polygraphology is still improperly

developed in Ukrainian forensic expertise, and conducting psychophysiological studies/examinations using a polygraph is not a purely standardised procedure [10]. Certainty often becomes the subject of discussions among practitioners of law enforcement agencies, the prosecutor's office, and the court. The differences in the interpretation of certainty by psychologists, polygraph examiners, and lawyers are also unclear. To explain the essence of this concept, it is necessary to focus on the philosophical definition of reliability, which represents the validity, evidence, and indisputable nature of certain elements of scientific and everyday knowledge. That is, it is part of the conceptual apparatus of all sciences based on the scientific method of cognition. The certainty of judgments and theories is ensured by empirical statements, experimental data, and public practice. In a subjective sense, certainty is a corresponding form of awareness of the truth (establishment of objective reality) by an individual. In contrast to the philosophical concept, in the legal literature, certainty is perceived in the context of providing evidence, since it correctly and adequately reflects the material and non-material traces of the events under study, that is, this refers to their compliance with objective reality. Certainty in criminal proceedings and in the natural sciences differs because this is the so-called practical reliability, which is comprehensively satisfied in the most critical situations of everyday life. In fact, certainty implies the subjective conviction of the procedural body based on the analysis of the collected evidentiary material during pre-trial investigation and judicial proceedings. But the psychological and psychophysiological assessment of the concept of reliability, in particular, in the framework of conducting a forensic psychophysiological examination using a polygraph or other types of research, does not replace the assessment of testimony (evidence) in the understanding of its pre-trial investigation and court bodies. The polygraph examiner builds an expert opinion on the certainty of indications (their compliance with reality) based on their own special scientific knowledge about the laws of functioning of the human psyche and body through its perception, memory, thinking, attention, speech, behaviour, etc. Thus, they formulate and justify their own expert hypothesis regarding the certainty of indications in the framework of a psychophysiological study conducted by them using a polygraph, discussing it from the standpoint of science, and not legal assessment.

The question of proper analysis of the tools of certainty of the information received training of qualified specialists and providing at the state level with legal regulations that will govern the use of polygraphs in various industries and areas of public legal relations remains open. This raises doubts and critical comments from opponents of the polygraph, such

as the scientific certainty of the results obtained with its help. Researchers and practitioners in the field of polygraphology have repeatedly noted that the certainty (accuracy) of research data conducted using a polygraph demonstrates high indicators, provided that they were conducted by experienced polygraph examiners, since the objectivity of a specialist's conclusion directly depends on their qualifications [11]. In scientific circles, there is an opinion even about the belonging of polygraphology to art, and not to science, since the factor of qualification, experience, and intuition of a polygraph examiner is too important. Therefore, the issue of the need to increase the requirements for the quality of training of polygraph specialists, and the development of a procedure for certification of polygraphs, certification of research methods, unification and standardisation of the training process of specialists of the relevant profile remains on the agenda. Another problem is the technical aspect, the analysis of which is often based on the arguments of researchers who deny the feasibility of instrumental detection using a polygraph [12]. As a counterargument, now the polygraph is an ultra-precise scientific-technical device that reliably reflects the real psychophysiological state of the human body in response to questions (stimuli) proposed to it by the polygraph examiner. This fact is indisputable and proven since the polygraph is a complex of devices that were credibly proven in other fields of scientific knowledge (medicine, cybernetics, computer science, automation and telemechanics, psychology, biomechanics), sufficient and proper practice of conducting psychophysiological research with its application. Its technical side is closely related to the diagnosis of recorded human reactions, and the latter directly depends on the skills of the polygraph examiner to use the necessary tactics in conducting psychophysiological research using a polygraph. Compliance with the above-mentioned components of the polygraph process provides an exhaustive answer to the question: is it possible to obtain unambiguously interpreted information through this scientific-technical device, such as the patterns of manifestations of the emotional reaction of the investigated person to the corresponding stimuli? Undoubtedly, the answer is yes, but only if several important components are observed, such as the skill of the polygraph examiner, the time of day when such a procedure is performed, and the influence of the environment on the person under study during a psychophysiological examination using a polygraph. This is due to the fact that:

a) long-term international and Ukrainian practice of polygraph activity certifies that the skill of a polygraph examiner is the promptness of transmitting information to the investigated person in such a way that it affects them selectively and causes a strong emotional reaction only in strictly limited cases,

which are subject to an unambiguous explanation. To do this, the polygraph examiner should apply such specific techniques and methods so that they work most effectively to identify possible hidden information from a person, which is almost impossible to achieve in any other way;

b) in addition to the professionalism of the polygraph examiner, an important role in the psychophysiological study of persons using a polygraph is played by time aspect, that is, the effective time of day when it is advisable to perform such a procedure. Practising polygraph examiners defend the position that the most favourable is the first half of the day when the subject is not distracted from this procedure by other tasks. This is due to the biological rhythms of a person, which completely affect the processes of vital activity of individuals;

c) important in this process is the influence of the environment on the human body, which can define its various states and sensations. For the body to respond to specific changes in conditions with the optimal solution, it must quickly choose the optimal adaptation option for a particular situation from the available options. Therewith, it is not always possible to consider the so-called critical phases of the physical, emotional and intellectual state of the investigated person, but failure to comply with these and other important components of conducting a psychophysiological study using a polygraph will substantially affect its quality, and therefore, its reliability. To avoid this, the polygraph examiner should think carefully about the process of organising, planning, and tactics of conducting a psychophysiological study using a polygraph, to avoid difficulties in evaluating the results obtained and verifying them.

Regarding the relationship between the admissibility and evidentiary value of the obtained results of conducted studies using a polygraph, they should be considered in the context of procedural legislation. Therefore, admissibility from the standpoint of the current Criminal Procedure Code of Ukraine is a property of evidence that characterises it from the standpoint of the legality of the source of factual data (information), and methods of obtaining and forms of fixing factual data contained in such a source, in accordance with the procedure provided for by the Criminal Procedure Law, and by an authorised person or body as a result of conducting an investigative (search) or other procedural action. Admissibility includes four criteria (elements):

- appropriate subject authorised to conduct procedural actions aimed at obtaining evidence;
- appropriate source of factual data (information) that makes up the content of evidence;
- appropriate procedural action applied to obtain evidence;

– appropriate procedure for conducting a procedural action (judicial or investigative), which is used to obtain evidence.

According to part 1 of Art. 86 of the Criminal Procedure Code of Ukraine, evidence is recognised as admissible if it is obtained in accordance with the procedure established by this Code. However, according to part 1 of Art. 87 of the Criminal Procedure Code of Ukraine, evidence obtained as a result of a substantial violation of human rights and freedoms guaranteed by the Constitution and laws of Ukraine, international treaties of Ukraine, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine, and any other evidence acquired through information obtained as a result of a substantial violation of human rights and freedoms [13] is unacceptable. The issue of admissibility of evidence is decided by the court during its assessment in the consultation room in the process of making a court decision (part 1 of Art. 89 of the Criminal Procedure Code of Ukraine).

The court also decides on the recognition of evidence as inadmissible if the obvious inadmissibility of evidence is established during the trial. According to part 2 of Art. 89 of the Criminal Procedure Code of Ukraine, if the inadmissibility of evidence is established during the trial, the court recognises this evidence as inadmissible, which entails the impossibility of examining such evidence or stopping its examination at the court session, if such research was initiated.

To recognise evidence as admissible, the position of its relevance must be fixed. In the theory of criminal procedure, the relevance of evidence is considered to be the possibility of using it to establish factual data (information about facts) in criminal proceedings, and circumstances that are subject to proof due to the existing criminal procedure relationship between them [14].

According to Art. 85 of the Criminal Procedure Code of Ukraine, relevant evidence is evidence that directly or indirectly confirms the existence or absence of circumstances to be proved in criminal proceedings, other circumstances that are relevant for criminal proceedings, and the certainty or uncertainty, the possibility or impossibility of using other evidence.

The categorical concept of proof in criminal proceedings is based on the theory of reflecting the general properties of matter. A person is able to capture in memory the events in which they directly took part, observed, or heard about [15]. The obtained factual data using a polygraph can serve as an important factor in the formation of the source base, and therefore they can be considered evidence, referring to the current national criminal procedure legislation, which stipulates that all evidence must be admissible and relevant. The relevance of evidence

is determined by its suitability for establishing the presence or absence of circumstances covered by the subject of evidence in criminal proceedings. The admissibility of evidence means that factual data as evidence must be obtained, firstly, by an authorised subject; secondly, from a well-known, verifiable, not prohibited by law source; thirdly, factual data must be obtained in accordance with the procedure established by law in compliance with the procedural form; fourthly, factual data and the process must be properly fixed and certified. Evidence must be “sufficient”, that is, those that must, in accordance with the requirements of the law, indicate the commission of a criminal offence by a specific person. The concept of “sufficiency” covers quantitative and qualitative aspects of the phenomenon. The evidence on which the decision is based must be certain, and their number must be enough to allow making the right decision. Therefore, certain information collected, verified and evaluated by the investigator in accordance with the procedure established by law should be considered sufficient evidence. Polygraph information data indicate the sources of those facts that have the force of proof after fixing them in the proper procedural order [16]. Actual data established during a psychophysiological examination using a polygraph may become evidence, provided that they:

- relate to the crime event under investigation and
- contribute to establishing the circumstances of what was done as a subject of proof;
- obtained from sources, the list of which is fixed by the Criminal Procedure Code of Ukraine, as judicial evidence;
- attached to criminal proceedings in accordance with the procedure established by the criminal procedure law for each type of judicial evidence.

The main condition is that the basic requirements for initiating, appointing, and conducting a forensic psychophysiological examination using a polygraph must be met:

- firstly, the written consent of the person under investigation to conduct such an expert examination against them;
- secondly, the preparation by a polygraph specialist involved in a pre-trial investigation or court as an expert of a thorough conclusion of a special expert study conducted [17].

Compliance with these and other fundamental requirements gives grounds for the court to use the results of such an expert examination as one of the possible evidence in conjunction with other evidence collected by the pre-trial investigation in open criminal proceedings [18]. Although, this study believes that it is not necessary to initiate a forensic psychophysiological examination using a polygraph en masse without absolute need. The refusal of a person,

in particular, a suspect or accused, to take part in it should not be considered by the pre-trial investigation or the court as evidence of their guilt in the committed criminal offence. Sometimes the results of the conclusion of an expert polygraph examiner indicate their involvement in the crime, but the person continues to categorically deny their involvement in the crime, although there is no other way to refute these results. In this case, the results of a forensic psychophysiological examination using a polygraph should definitely be verified by other evidence, and the pre-trial investigation or the court should not consider them fundamental [19]. An expert polygraph examiner may make a mistake and give an unreliable expert opinion, and, conversely, failure or disregard by the court of the results of such an expert examination set out in the expert opinion may lead to a judicial error. That is, the results obtained in the process of conducting such an expert examination may have the status of procedural evidence if the following requirements are met:

- the use of a polygraph will be conducted with
- for the purpose provided for by the procedural law;
- the fact of application (and other data in accordance with the rules established by law) is reflected in the protocol of the procedural action;
- the obtained results of the conducted forensic psychophysiological examination using a polygraph are attached to the materials of open criminal proceedings [20].

It is important to consider that the conclusion of an expert polygraph examiner does not have an advantage over other evidence available in criminal proceedings, in particular, indirect ones. They should be evaluated as follows:

- it is necessary to have several indirect proofs, between which there must be a logical connection and which together form a single chain, complement each other's content;
- indirect evidence that is available in criminal proceedings must follow from one circumstance that relates to the subject of proof;
- from an integral system of interrelated indirect evidence, a conclusion should be built that will serve as the basis for the pre-trial investigation to put forward investigative versions and make a procedural decision.

The realities of today convincingly prove the importance, and if necessary – the need to use the results of psychophysiological studies, including expert ones, using a polygraph, to establish objective reality in matters that require urgent clarification. However, the legislative disorder of the polygraph process in Ukraine negatively affects the recognition of the results of psychophysiological studies using a polygraph as verified, that is, those that can be fully

and systematically used, in particular, in procedural activities, primarily in criminal proceedings. The problem of the issue is the ambiguous attitude of some researchers and practitioners to the results of research conducted through a polygraph, from the standpoint of their certainty and evidentiary value, since specialists are often involved in this process instead of experts. This is true, but the excuse for this is the insufficient number of certified experts of the relevant profile who could fully meet the needs of customers (initiators) of such studies. Polygraph specialists are attracted as experts in compliance with the procedural procedure and assigning them appropriate duties. The selection of such specialists is based on the criterion of their specific practical achievements, where they demonstrated professional skills in the field of special knowledge in the field of polygraphology to perform complex tasks related, in particular, to the investigation of committed criminal offences. Having the rights of an expert, such specialists conduct psychophysiological expert examinations using a polygraph and are legally responsible for the quality of tasks performed by them, which correlate with the certainty of the results provided. Since certainty implies the quality of the conducted research and correlates with the relevance and admissibility of the results obtained, the actual data obtained through a polygraph can serve as an important factor in the formation of the source base, and therefore be called evidence.

## ■ Conclusions

Summarising the above, it can be noted that:

1. The scientific analysis of theoretical and practical components that reflect accuracy and certainty was conducted, certifying that they form the basis for the certainty of the obtained results of psychophysiological studies conducted using a polygraph. In turn, the certainty of such information data demonstrates high indicators, provided that they were conducted by experienced polygraph

examiners, since the objectivity of the specialist's conclusion directly depends on their qualifications.

2. Certainty is interrelated with admissibility as a property of proof, which characterises it from the standpoint of the legality of the source of factual data (information), and methods of obtaining and forms of fixing factual data. Therefore, evidence is considered admissible if it is obtained legally. Considering the mandatory compliance with all necessary procedures of procedural activity related to the appointment and conduct of a forensic psychophysiological examination using a polygraph, the results of such studies may belong to the evidence source base.

3. Notably, despite the current intensive development of the polygraph process in Ukraine and the systematic introduction of polygraphs in law enforcement activities, in particular, in criminal proceedings, the main discussion issue regarding the evidentiary value of the results obtained with its help as an independent source of evidence in criminal proceedings has not been resolved, which further creates a number of problems in Ukrainian law enforcement practice. They can be overcome, in particular, in the following way: firstly, recognise psychophysiological studies using a polygraph, including expert ones, such that it is possible to obtain the necessary information data that cannot be obtained in any other way; secondly, not to consider the results of such studies as fundamental in making procedural decisions, but to add them to those that together form the source evidence base in criminal and other legal proceedings; thirdly, recognise that conducting a forensic psychophysiological examination using a polygraph can be performed not only by an expert but also by those involved in this process in compliance with the procedural procedure, a specialist who, acquiring the status of an expert, bears full legal responsibility for the quality of the expert research performed and the results obtained as verified data that can serve as evidence in criminal proceedings.

## ■ References

- [1] Dufeniuk, O.M., & Kuntii, A.I. (2016). Judicial practice of evaluating the results of the use of a polygraph at the stage of pre-trial investigation. *Legal Scientific Electronic Journal*, 2, 119-121.
- [2] Gołaszewski, M. (2019). Report from the 54th Seminar of the American Polygraph Association. *European Polygraph*, 13(3(49)), 161-165. doi: 10.2478/ep-2019-0012.
- [3] Groshevy, Yu.M., & Stakhivskiy, S.M. (2006). *Evidence and proof in the criminal process*. Kyiv: KNT; Fursa S.Ya.
- [4] Horvath, F. (2020). A hundred years of polygraphy: Some primary changes and related issues. *European Polygraph*, 14(1(51)), 30-43. doi: 10.2478/EP-2020-0007.
- [5] Kholodnyy, Iu.I. (2004). *Accuracy of a conclusion on results of psychophysiological research with application of the polygraph on an example of work in real conditions*. Retrieved from <http://www.liedetector.ru/pub/pub17.php>.
- [6] Komissarov, V.I., & Kholodnyy, Iu.I. (2018). *Polygraph as a means of obtaining procedurally significant information on criminal law*. Retrieved from <http://web1.law.edu.ru/article/article.asp?articleID=148693>

- [7] Komissarova, Ia.V. (2005). Results of psychophysiological research with the use of polygraph as a proof in the corner process. *Angle Process*, 5, 58-65.
- [8] Komissarova, Ya.V. (2000). Precedent for recognizing the conclusion of a polygraph examiner as a document – a source of evidence. In *Theory and Practice of Using the Polygraph in Law Enforcement: Proceedings of the 4 International Scientific and Practical Conference* (pp. 11-104). Kyiv: National University. Sochi: GUV D Krasnodar.
- [9] Kormos, M. (2017). Polygraph examinations in the department of special psychology of the ministry of the interior of the Slovak Republic – a retrospective view. *European Polygraph*, 11, 3(41), 120-127. doi: 10.1515/ep-2017-0012.
- [10] Kovalchuk, S.O. (2001). Polygraph as a non-traditional forensic tool and the possibility of its use in criminal proceedings. In *Actual Problems of Criminology: Proceedings of the Scientific and Practical Conference* (pp. 92-100). Donetsk: Donetsk Internal Military Institute of the Ministry of Internal Affairs of Ukraine.
- [11] Motliakh, O.I. (2011). Psychophysiological examination using a polygraph as a possible source of evidence. *Law and Public Administration*, 4, 117-120.
- [12] Motliakh, O.I. (2012). Admissibility of use in proving factual data obtained by polygraph. In *Special Equipment in Law Enforcement: Proceedings of the 5th International Scientific and Practical Conference* (pp. 31-34). Kyiv: National Academy of Internal Affairs.
- [13] Motliakh, O.I. (2012). The place of the results of polygraph research in the system of providing evidence in criminal proceedings. *Scientific Bulletin of Uzhhorod National University*, 19(4), 147-149.
- [14] Motliakh, O.I. (2012). *Polygraph: The scientific nature of the origin, regulatory and legal regulation and acceptable limits of application*. Kyiv: Education of Ukraine.
- [15] Nichiporenko, T.Iu. (2008). Application of the polygraph in the proof of criminal cases: The view of the proceduralist. *Criminal Procedure*, 3, 45-48.
- [16] Shapovalov, V.O. (2012). *Method of determining the psychological characteristics of reliability/unreliability of indications in legal practice*. Kyiv: Kafedra.
- [17] Shapovalov, V.A. (2015). *Methods of psychological assessment of the reliability of testimony in legal practice*. Kyiv: Education of Ukraine.
- [18] Slowik, S.M. (2020). Critical changes over the 100 year evolution of polygraph practices. *European Polygraph*, 14(1(51)), 50-57. doi: 10.2478/EP-2020-0010.
- [19] Stokov, I.V. (2005). Problems of polygraph application in crime detection and expert research. In *Special Equipment in Law Enforcement: International Scientific and Practical Conference* (pp. 159-163). Kyiv: National Academy of Internal Affairs.
- [20] Tertyshnik, V.M., & Slinko, S.V. (1998). *Theory of evidence*. Kharkov: Arsis.
- [21] Widacki, J., & Szuba-Boron, A. (2017). Polygraph examinations of civil servants in Poland. *European Polygraph*, 11(1(39)), 15-23. doi: 10.1515/ep-2017-0002.

#### ■ Список використаних джерел

- [1] Дуфенюк О. М., Кунтій А. І. Судова практика оцінки результатів використання поліграфа на стадії досудового розслідування. *Юридичний науковий електронний журнал*. 2016. № 2. С. 119–121.
- [2] Gołaszewski M. Report from the 54<sup>th</sup> seminar of the American polygraph association. *European polygraph*. 2019. Vol. 13. No. 3. Issue 49. P. 161–165. doi: 10.2478/ep-2019-0012.
- [3] Грошевий Ю. М., Стахівський С. М. Докази і доказування у кримінальному процесі: наук.-практ. посіб. Київ: КНТ; Фурса С. Я., 2006. 272 с.
- [4] Horvath F. A hundred years of polygraphy: Some primary changes and related issues. *European polygraph*. 2020. Vol. 14. No. 1. Issue 51. P. 30–43. doi: 10.2478/EP-2020-0007.
- [5] Холодный Ю. И. Точность вывода по результатам психофизиологического исследования с применением полиграфа на примере работы в реальных условиях. URL: <http://www.liedetector.ru/pub/pub17.php>.
- [6] Комиссаров В. И., Холодный Ю. И. Полиграф как средство получения процессуально значимой информации по уголовному праву. URL: <http://web1.law.edu.ru/article/article.asp?articleID=148693>.
- [7] Комиссарова Я. В. Результаты психофизиологического исследования с использованием полиграфа как доказательство в уголовном процессе. *Уголовный процесс*. 2005. № 5. С. 58–65.
- [8] Комиссарова Я. В. Прецедент признания заключения специалиста-полиграфолога документом – источником доказательств. Теория и практика применения полиграфа в правоохранительной деятельности: IV Междунар. науч.-практ. конф. Сочи: ГУВД Краснодар, 2000. С. 101–104.

- [9] Kormos M. Polygraph examinations in the department of special psychology of the ministry of the interior of the Slovak republic – a Retrospective View. *European polygraph*. 2017. Vol. 11. No. 3. Issue 41. P. 120–127. doi: 10.1515/ep-2017-0012.
- [10] Ковальчук С. О. Поліграф як нетрадиційний криміналістичний засіб і можливості його використання в кримінально-процесуальному доказуванні. *Актуальні проблеми криміналістики: наук.-практ. конф.* Донецьк: Державний НДІ МВС України, 2001. С. 92–100.
- [11] Мотлях О. І. Психофізіологічна експертиза з використанням поліграфа як можливе джерело доказів. *Право та державне управління*. 2011. № 4. С. 117–120.
- [12] Мотлях О. І. Допустимість використання в доказуванні фактичних даних, які були отримані за допомогою поліграфа. *Спеціальна техніка у правоохоронній діяльності: V Міжнар. наук.-практ. конф.* (Київ, 25 листоп. 2011 р.). Київ: Національна академія внутрішніх справ, 2012. С. 31–34.
- [13] Мотлях О. І. Місце результатів поліграфологічних досліджень в системі забезпечення доказів у кримінальному провадженні. *Науковий вісник Ужгородського національного університету*. 2012. Т. 4. Вип. 19. С. 147–149.
- [14] Мотлях О. І. Поліграф: наукова природа походження, нормативно-правове регулювання та допустимі межі застосування: монографія. Київ: Освіта України, 2012. 394 с.
- [15] Ничипоренко Т. Ю. Применение полиграфа в доказывании по уголовным делам: взгляд процессуалиста. *Уголовный процесс*. 2008. № 3. С. 45–48.
- [16] Шаповалов В. О. Методика визначення психологічних ознак достовірності/недостовірності показань у юридичній практиці: метод. посіб. Київ: Кафедра, 2012. 92 с.
- [17] Шаповалов В. А. Методика психологической оценки достоверности показаний в юридической практике. Киев: Освіта України, 2015. 60 с.
- [18] Slowik S. M. Critical changes over the 100 year evolution of polygraph practices. *European polygraph*. 2020. Vol. 14. No. 1. Issue 51. P 50–57.
- [19] Строков І. В. Проблеми застосування поліграфа в розкритті злочинів та експертних дослідженнях. *Спеціальна техніка у правоохоронній діяльності: Міжнар. наук.-практ. конф.* Київ: Національна академія внутрішніх справ, 2005. Ч. 2. С. 159–163.
- [20] Тертышник В. М., Слинко С. В. Теория доказательств. Харьков: Арсис, 1998. 256 с.
- [21] Widacki J., Szuba-Boron A. Polygraph examinations of civil servants in Poland. *European polygraph*. 2017. Vol. 11. No. 1. Issue 39. P. 15–23. doi: 10.1515/ep-2017-0002

## Допустимість і доказова сутність результатів психофізіологічних досліджень із застосуванням поліграфа

Олександр Іванович Мотлях

Національна академія внутрішніх справ  
03035, Солом'янська площа, 1, м. Київ, Україна

■ **Анотація.** Мета дослідження – висвітлити актуальні питання, пов'язані з допустимістю та доказовою сутністю результатів психофізіологічних досліджень із застосуванням поліграфа. Методологічний інструментарій обрано відповідно до поставленої мети, специфіки об'єкта і предмета дослідження. Методологічне підґрунтя становили загальний діалектичний метод наукового пізнання реальних явищ та їх зв'язок з теорією та практикою використання результатів психофізіологічних досліджень із застосуванням поліграфа, а також спеціальні методи дослідження, а саме: метод системного аналізу, порівняльно-правовий, системно-структурний і метод прогнозування. Обґрунтовано наукову думку щодо сутності позицій допустимості й доказовості результатів психофізіологічних досліджень із застосуванням поліграфа, які в сукупності з іншими даними можуть слугувати доказами у відкритому кримінальному провадженні. Аргументовано наукову позицію стосовно того, що основу достовірності психофізіологічних досліджень із застосуванням поліграфа формують такі складові, як точність і надійність. Вони не є тотожними поняттями. Кожне з них має певне змістове навантаження, яке в сукупності забезпечує верифікованість результатів досліджень, здійснених із застосуванням поліграфа. Своєю чергою достовірність корелюється з надійністю і точністю отриманих інформаційних даних за рахунок якості виконаних досліджень поліграфологом, передусім у питанні проведення судової психофізіологічної експертизи із застосуванням поліграфа. Означені вище складові забезпечують допустимість як властивість доказу, що характеризує його з погляду законності джерела фактичних даних (відомостей, інформації), а також способів одержання та форм закріплення фактичних даних. Доказ визнають допустимим, якщо його отримано в законному порядку. З огляду на те, що проведення судової психофізіологічної експертизи із застосуванням поліграфа є впорядкованою діяльністю, що передбачає дотримання всіх процесуальних вимог, отримані результати цілком можуть мати статус процесуальних доказів

■ **Ключові слова:** поліграф; поліграфологія; спеціаліст-поліграфолог; експерт; спеціальні знання; судова психофізіологічна експертиза

UDC 343.98  
DOI: 10.33270/01211203.16

## Features of Investigation of Murders Committed Using Firearms

Vlada O. Husieva\*

Kharkiv National University of Internal Affairs  
61080, 27 Landau Ave., Kharkiv, Ukraine

■ **Abstract.** The purpose of the study is to determine the typical tactical tasks to be performed at the initial stage of investigation of murders committed using firearms, and the specific features of their implementation, based on the analysis of investigative and judicial practice, and studies of Ukrainian and foreign researchers. Methodology. The general dialectical and special research methods are used to achieve this goal, in particular: system analysis, comparative-legal, and system-structural methods. The scientific originality of the study lies in the fact that based on the analysis of available studies in the outlined area, materials of investigative and judicial practice, typical tactical tasks to be performed at the initial stage of the investigation of intentional murders committed using firearms are considered. Conclusions. The position, according to which the activity of investigating murders committed using firearms is characterised by a prominent level of complexity because during their it is necessary to perform a set of tactical tasks is justified. It is emphasised that such tasks include: establishing the identity of the victim, the nature of the event of a criminal offence, the place and time of committing a criminal offence, the method of committing a criminal offence; examining the crime weapon; establishing the identity of the criminal and the motives for committing a crime. It is stated that tactical tasks depend on the current investigative situation, aimed at checking or refuting investigative versions. The implementation of tactical tasks during the investigation is possible by conducting a complex of investigative (search), secret investigative (search) and procedural actions, and separate measures to ensure criminal proceedings. In the context of this study, the most effective actions that should be taken are proposed, and some of their possibilities are identified

■ **Keywords:** intentional murder; firearms; pre-trial investigation; criminal proceedings; tactical task

### ■ Introduction

According to the crime rating compiled by the Numbeo information portal, Ukraine ranks first among European countries with the lowest security index [1]. One of the factors that substantially affect the Security Index should be considered the undeclared war that continues in the East of Ukraine. This factor is also associated with an increase in illegal flows of firearms, military supplies, explosives, and explosive devices in Ukraine.

Firearms are a common tool that is used in the commission of various types of criminal offences. According to statistical reports generated by the Prosecutor General's Office of Ukraine in 2018, 508 criminal

offences were committed using firearms, in 2019 – 388, and in 2020 – 395. A substantial place among these indicators is occupied by intentional murder. In particular, in 2018, 60 intentional murders were committed using firearms, in 2019 – 43, in 2020 – 57 [2]. Therewith, a substantial number of suicides and negligent homicides are committed using firearms.

In this regard, Ukrainian and foreign researchers focus on the need to strengthen responsibility for the illegal handling of weapons [3-5], and some of them demonstrate that this is already a proven way to reduce the crime rate [6]. American researchers even formulate conclusions that in large cities of the United States, where branches of the Association of firearms dealers are located, the risk of killing an intimate partner is higher, and the presence of branches of this association researchers define as a risk factor for increasing the number of murders [7].

Admittedly, there are studies in which researchers do not find confirmation of the relationship

### ■ Suggested Citation:

Husieva, V.O. (2021). Features of investigation of murders committed using firearms. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 16-27. doi: 10.33270/01211203.16

■ \*Corresponding author

■ Received: 25.08.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

between the liberalisation of gun legislation and the level of homicides or other violent crimes [8], but these are isolated cases.

Researchers from other countries also note the presence of such problems. For example, in Sweden, the number of homicides related to the use of firearms and attempted murders is increasing. Because of this, the police have difficulties in solving these crimes related to the use of firearms, so the level of trust in the Swedish police and judicial system may decrease among citizens [9]. Such consequences can also occur in Ukraine, and this is unacceptable since the main criterion for evaluating the effectiveness of police bodies and divisions is the level of public confidence [10].

The above actualises the need for effective investigation of criminal proceedings initiated on the facts of detection of corpses with gunshot wounds. Notably, the process of investigating murders is quite complicated, and those that are committed using firearms are even more complex, because a list of circumstances is subject to clarification, and a number of difficult tactical tasks are conducted both at the initial stage of the investigation and in the future.

Among the latest studies aimed at clarifying the specific features of the investigation of murders committed using firearms, it is necessary to highlight the methodological recommendations for practitioners developed by V.S. Bondar, in which the researcher provided a criminal-legal description of such crimes, determined the circumstances to be established, typical investigative situations and corresponding investigative versions, the tactics of conducting individual investigative (search) actions, and the specific features of the appointment of forensic examinations [11].

A comprehensive study of the methodology for investigating intentional murders committed in a way that is threatening to the lives of a substantial number of persons was conducted by V.V. Nevhad. In this work, it is emphasised that depending on the crime weapon in the investigated group of murders, it is necessary to distinguish those committed using firearms [12]. Aspects of the problem related to firearms in the process of homicide investigation were investigated by V.O. Yaremchuk [13].

Thus, intentional murders committed using firearms are quite common, but the studies of typical tactical tasks to be performed at the initial stage of their investigation have not been conducted by Ukrainian and foreign researchers, which determines the relevance of the problem raised.

The purpose of the study is to determine, based on the analysis of investigative and judicial practice, and studies of Ukrainian and foreign researchers, typical tactical tasks of the initial stage of investigation

of murders committed using firearms. The following tasks were identified to achieve the stated objective:

- outline the typical tactical tasks to be performed at the initial stage of investigating murders committed using firearms;
- considering tactical tasks, examine the specific features of their implementation during the investigation.

The scientific originality of the study is the consideration of materials of investigative and judicial practice and typical tactical tasks to be performed at the initial stage of investigation of murders committed using firearms based on the analysis of studies of Ukrainian and foreign researchers.

In accordance with the tactical tasks, the most optimal ways of their implementation are outlined, in particular, investigative (search) actions that should be conducted are identified, and the possibilities of individual forensic examinations are highlighted.

## ■ Results and Discussion

The ultimate goal of pre-trial investigation in the criminal procedural aspect can be defined as the fulfilment of the tasks of criminal proceedings. In the forensic aspect, this is the establishment of objective truth by implementing a set of intermediate and strategic tactical tasks.

Tactical tasks that are subject to implementation are determined by the investigative situation that has formed at a certain stage of the investigation and the investigative versions that are subject to verification. The need to formulate tactical tasks is justified by the fact that they allow you to plan an investigation, choose a set of investigative (search), secret investigative (search) and procedural actions, tactical operations, etc., which should be conducted to process the suggested investigative versions.

Researchers classify tactical tasks according to various criteria. The study supports the position of B.M. Shevchuk, who, based on the stages of criminal proceedings, identified tactical tasks of pre-trial investigation, judicial proceedings, and tactical tasks that need to be completed before the start of pre-trial investigation. Among the tactical tasks of pre-trial investigation, the researcher identified the following:

- establishing the nature of the event of a criminal offence;
- establishing the place and time of commission of a criminal offence;
- establishing the method of committing and concealing of a criminal offence;
- establishing the subject of criminal encroachment;
- establishing the motives for committing a crime;
- identification of the criminal;
- identification of the victim(s);

- establishing the victim's provocative behaviour;
- checking the victim's connections;
- identification of accomplices of the crime;
- detaining a criminal at the crime scene;
- searching for a person who fled the scene and is hiding from the investigation;
- checking the suspect's alibi;
- identification of witnesses;
- checking the incrimination (self-immolation);
- neutralisation of opposition to the investigation by interested parties;
- investigation of the suspect's identity;
- ensuring the protection of evidence;
- ensuring the protection of the victim and witnesses;
- establishing the causes and conditions that contributed to the commission of the crime, taking measures to eliminate them [14].

Given the position of V.M. Shevchuk, it is proposed to consider in detail the typical tactical tasks to be performed at the initial stage of the investigation in case of detection of a corpse with a gunshot wound, and the specific features of their implementation.

Notably, in the event of receiving a message about the discovery of a corpse, the investigator is charged with the duty to ensure the presence at the scene of the incident of a forensic medical expert, with whose involvement the body will be examined. In addition, depending on the place of detection of the corpse, the issue of involving a cynologist with a service dog should be resolved. Analysis of investigative practice shows that if a body is found in apartments of multi-storey buildings located in large cities, the involvement of a service dog is ineffective. In other cases, if the murder was committed recently and there is reason to believe that smell traces could have remained at the scene, its use is appropriate. This is due to the fact that the cynologist with the service dog can assist in identifying and selecting smell traces, which can later be sent for forensic-odorological examination. In addition, a cynologist with a service dog help in finding the criminal in hot pursuit.

When determining the subjects that should be involved in the inspection and what determines the success and timeliness of certain tactical tasks, the commission of murder using firearms is the basis for attracting a written (as an exception – oral with subsequent registration in writing) request of the head of the pre-trial investigation body or a person performing their duties, a specialised mobile laboratory of the expert service of the Ministry of Internal Affairs. The decision on the expediency of attracting a specialised mobile laboratory to take part in the inspection of the scene of an accident is

made by the management of the relevant division of the expert service of the Ministry of Internal Affairs together with the management of pre-trial investigation bodies, depending on the category of the crime committed, objective circumstances and the need to apply appropriate special knowledge [15]. The need to attract specialists to take part in the review is due to the fact that the further course of the investigation depends on the thoroughness and correctness of its implementation.

The first tactical task to be performed is to establish the identity of the victim because this will be directly related to the motives for committing murder or the reasons for committing suicide, that is, establishing the nature of the event that occurred, etc. Establishing the identity of the victim involves not only the investigation of their personal data but also the type of occupation, lifestyle, material standard of living, etc.

Establishing the identity of the deceased, in particular, their profession is associated with the requirement to provide a preliminary legal qualification of the act that occurred, because it is the preliminary legal qualification of a criminal offence with the indication of the article (part of the article) of the Law of Ukraine On criminal liability that is entered in the Unified Register of Pre-Trial Investigations [16]. For example, if the victim is an employee of a law enforcement agency or a journalist, the investigator must decide on the need to exercise legal qualification under Art. 348 or 348-1 of the Criminal Code of Ukraine, respectively. These criminal offences are also often committed using firearms [17; 18], but researchers have not yet conducted a separate investigation of tactical tasks to be performed during such an investigation, which actualises the problems raised in the study.

Another tactical task is related to “identifying the victim” – establishing the nature of the event of a criminal offence, that is, murder, intentional or negligent, or suicide. By completing this task, which is quite complex, a preliminary legal qualification of the event will be provided.

For the final and correct qualification of the event that resulted in the violent death of a person, as intentional murder, as O. Peresada rightly notes, it is necessary to determine in detail all the circumstances that constitute the relevant crime. The object of encroachment of intentional murder is always the life of another person, but the object of encroachment of suicide is one's own life. The subject-object composition of the accident event is exclusively random due to the coincidence of factual circumstances, which may partially coincide or not coincide with the corresponding qualification signs

of intentional murder. On the objective side, the circumstances of intentional murder, suicide, and accident can be similar and have a lot in common. However, it will be essential to establish a causal relationship between the act and the consequences. If there is no such connection, it can be argued that an accident occurred. If there is a causal relationship, then the subjective side of the event, namely the presence and form of guilt of the person, requires increased attention. Intentional murder is always characterised by the intent to deprive a person of life. If the guilty person did not have a corresponding intention and did not even realise the possibility of such consequences, the act should be qualified under other articles of the Criminal Code of Ukraine, depending on other circumstances (for example, Art. 119 “Negligent homicide”, etc.). If the subject of the act and the injured person coincide (in the case of suicide or negligent death), the qualification of the act as intentional murder can be excluded [19].

Determining the nature of the event of a criminal offence begins with an inspection of the scene of the incident. It is proposed to outline the circumstances that indicate the commission of suicide and can be identified during this investigative (search) action.

Suicide may be indicated by the presence of a suicide note at the place where the body was found. Admittedly, the discovery of only this fact should not be immediately perceived as an indisputable argument indicating the commission of suicide, because if the murder was a contract killing and the organiser was interested in staging a suicide, then forging such a note is possible. In this regard, the discovery of the note should not be defined as a circumstance that allows the investigation to be taken lightly. The pre-trial investigation, even in the case of establishing the fact of suicide, must be complete and impartial, and the investigator must conduct a set of actions aimed at establishing the objective truth.

The presence at the scene of an accident of firearms, shell casings and bullets that are in close proximity to the victim's body, or in the hands (if this refers to a weapon) or in the body (meaning a bullet) may also indicate that the person committed suicide.

Refutation of the version of suicide can occur during the examination of the corpse and forensic medical examination, during which grounds will be obtained to believe that it is impossible to independently cause bodily injuries [20]. The presence of other injuries, the nature of which may indicate a struggle, and the disturbed environment at the scene of the incident give grounds to put forward a version of committing violence against the victim or countering violence against them.

The absence of weapons, shell casings, cash, securities, or other valuable items at the scene may indicate that a person was murdered.

It is necessary to search for biological traces, in particular, saliva, blood, cells with nuclei, and fingerprints or bootprints to refute or confirm the presence of unauthorised persons at the scene. If weapons and shell casings are found at the site, collecting of biological material from them should not be done, it is correct to send it directly for research to cytologists or geneticists to conduct appropriate examinations. It is mandatory to discharge the weapon and put it on the safety catch before packing it, in compliance with appropriate measures to prevent contact interaction with members of the investigative task force. Packaging of objects that will be sent to experts for forensic examinations to identify and examine biological material should be conducted in paper envelopes or boxes, ensuring their internal fixation.

It is necessary to focus on the mandatory photo recording of the corpse and the scene of the incident, which will reproduce not only the surrounding environment but also the detected traces, in particular, traces of the bottom of shoes, fingerprints, etc. After that, corpse examination can be started.

If at the time of the beginning of the examination of the corpse, the identity of the victim was not established, then the inspection report indicates information about their approximate age, focuses on a detailed description of the special signs found on their body. In this case, a set of measures should be implemented aimed at establishing the identity of the victim – the identity of an unidentified corpse.

Examination of the corpse with a detailed reflection of the relevant data in the protocol of the investigative action will allow performing a tactical task to establish the place and time of committing a criminal offence in the future. Body temperature, the nature of cadaveric phenomena give grounds for forensic medical experts to determine the time of death and the period of time during which the victim was alive after getting gunshot wounds. According to the nature of cadaveric phenomena and based on the results of the examination of the corpse, a forensic medical expert can give an opinion on the movement of the corpse or a change in its position.

Having detected the presence of gunshot injuries, during the examination, it is attempted to determine their nature, entrance and exit holes, establish the number of wounds, whether they correspond to each other's localisation on clothing and the human body, and take measures to preserve additional factors of the shots. For this purpose, it is advisable to cover the place with gunshot damage to

clothing with gauze or cloth. On the body, wounds can be covered with the same materials, receding a certain distance from the edges. These areas are covered with an adhesive film, which is then examined simultaneously with the objects. However, in the opinion of L. Golubovych, V. Olkhovskiy, and O. Gerasymenko, fine hairspray is the best option to use. It can cover substantial surfaces of various shapes, dries quickly, does not affect the results of further studies of traces, and does not change its physical and chemical composition [21].

Examination of the corpse ends with taking measures to preserve the original appearance of gunshot wounds. If they are not treated with the products mentioned above, then they must be covered with wet gauze or cotton wool. Certain precautions are taken to preserve additional factors of the shot in the hands of the victim, mainly, if there is a suspicion that they were shooting. In such cases, the hands may contain soot residues, individual dust particles, or traces of them in the form of minor damage. These areas of the body are treated with hairspray or covered with an adhesive film. Rubber gloves are worn on the hands [21]. The adoption of such measures is due to the need for further collection of samples to send them for forensic examination of materials, substances, and products to identify traces of powder combustion products.

When examining the scene of an accident, it is necessary to consider the presence of video surveillance cameras at the place of discovery of the body and near it, which will also allow for determining the time of committing a criminal offence and getting information about persons involved in the commission of a criminal law violation.

The search for eyewitnesses to the commission of a criminal offence or persons who may be aware of information of operational interest should also take place during the first visit to the scene of the incident because the timeliness of search and investigative actions is a guarantee of ensuring a quick and effective investigation.

Establishing the method of committing a criminal offence is also important during the investigation because it refers to the circumstances to be clarified. Knowledge of the method of committing a crime can be considered as a method of practical activity, one of the ways to establish the truth in a certain case, the investigation of which can last from establishing the method of committing a crime to its disclosure.

The fundamental possibility for this arises due to the fact that each method of committing a crime leaves only its inherent consequences. Examining such consequences, the investigator at the

stage of detection and investigation of the crime can build an imaginary model of what happened, put forward a version about the method used, and sometimes a version about the identity of the criminal. The method of committing crimes is an element of not only intentional but also negligent crimes. Since both intentional and negligent behaviour is an activity of a person, it also leads to certain consequences and causes corresponding changes in the environment, leaving behind traces with which the event can be investigated [22].

In the structure of methods of committing criminal offences, criminologists distinguish the preparation, direct commission, and concealment of a crime. The study shares the position that homicides committed using firearms are preceded by careful preparation [23]. This position is also justified by the materials of investigative and judicial practice, but simultaneously, preparation is available only in the case of intentional murder.

Preparation for the commission of intentional murder using firearms mainly consists in finding the murder weapon – firearms and ammunition for it, choosing the time and place of commission of a criminal offence, etc.

When determining the methods of performing this tactical task, it is advisable to focus on the importance of forensic examinations, in particular, complex ones. The most important condition for the successful implementation of a comprehensive expert examination, states I. Syvodied, is a high-quality and timely preparation of research objects. These objects must be collected during the inspection of the scene and other initial investigative actions. Therewith, it is necessary to ensure the provision of objects suitable for complex, rather than separate examination [24]. When assigning comprehensive examinations, it is necessary to be aware that the areas of knowledge that will be used for conducting research should be related.

An important role in the implementation of this tactical task is played by a comprehensive forensic ballistic and medical examination (the analysis of traces of a firearm shot that caused the injury (death) of a person).

The objects of complex forensic medical and ballistic examination are firearms, their parts, elements of ammunition equipment; gunshot injuries and layers on the body, clothing, shoes of the victim, or elements of the material situation of the scene of the accident; case materials containing information about the circumstances of the use of weapons and ammunition. The main task of complex forensic medical and ballistic examinations is aimed at establishing the circumstances of the use of firearms

and a certain type of ammunition that caused injury or death of a person, which can be formulated in the following questions: what was the relative location of the weapon and the victim during the shot; is it technically possible to perform a shot from the provided weapon by the victim themselves to cause injuries; what cartridge belongs to the projectile located in the victim's body; from what distance was the shot made; are the indications of citizen N. regarding the circumstances of the shot from the standpoint of special knowledge? [25].

These expert studies are quite complex and therefore are lengthy in time. Notably, now forensic medicine is actively implementing the latest computer technologies in practical work. The creation and use of 3D models greatly facilitate the interaction of forensic experts with law enforcement agencies, increase accuracy, and provide an opportunity to clearly illustrate expert opinions, which is extremely important for people with non-medical education [26]. In addition, three-dimensional models allow seeing in which parts of the bullet origin channel both the main and additional shot factors are present [27].

Without focusing on a thorough breakdown of the method of committing intentional murder using firearms, this is a complex issue, and therefore should be the subject of a separate study.

When performing tasks related to the examination of the weapon of crime, standard firearms can be used during the commission of a murder. There are also cases, states V. Yaremchuk, of the use of homemade, reconstructed, and atypical weapons. Firearms research during homicide investigations is conducted in several ways. The investigator, together with a specialist in forensic ballistics, when conducting such investigative (search) actions as an inspection of the scene of an accident, search, and an investigative experiment, conduct an inspection of firearms, traces of their action, and the circumstances of their use. In the future, a number of forensic examinations are appointed, the central place among which is occupied by the examination of weapons, traces, and circumstances of their use. Complex examinations can be appointed for the analysis of firearms. The effectiveness of the expert examination depends on the correct questions asked to the expert. For assistance in formulating questions for the expert, the investigator can contact specialists in forensic ballistics [13].

The group affiliation of the model of the weapon from which the shot was fired, in case of its absence at the scene, can be established by the type of cartridge used, the shape, size, location, and nature of the reflection of traces on the cartridge

case, the direction, angle of inclination, the number of rifling, the width of their fields, the calibre of the barrel, the degree of its wear, the state of the barrel bore, reflected in the traces on the shot bullet. Individual identification is conducted using an expert experiment. From the detected weapon, a shot is fired at a special bullet trap. At the stage of comparative research, the characteristics of experimental bullets and shell casings, and those submitted for research, are compared. Comparative microscopes, combining photographic images, etc. can be used [28].

Regarding the analysis of traces of firearms, the study shares the position of researchers who claim that it is a precise and time-consuming task, the results of which can later play a key role as a source of evidence [28]. In this regard, one of the main tasks at the scene of an accident is to identify traces of firearms, their correct removal and the appointment of a forensic ballistic examination in relation to them.

Establishing the identity of the criminal and the motives for committing a crime should take place not only by examining ideal traces but also material ones. The key to the success of this task is a detailed and careful inspection of the scene of the accident, during which the detection, correct removal, proper packaging and preservation in appropriate conditions of traces of biological origin left at the scene by the criminal must be ensured.

The most reliable way to identify biological traces is through molecular genetic investigation. During the investigation of intentional murders, human cells with nuclei from which it is possible to isolate DNA can be found in traces of blood, saliva, semen, hair, and epithelial lobules, including parts of organs and tissues of corpses. In case of detection, seizure, and storage of objects of biological origin during the inspection of the scene of an accident and other investigative (search) actions, the investigator, prosecutor, specialists, and all other participants must adhere to measures aimed at preventing the destruction or contamination of traces. Selective analysis of criminal proceedings on intentional murders, and materials of molecular genetic examinations, conducted by R.L. Stepaniuk, gave grounds for the researcher to conclude that cases of DNA damage during the extraction of traces, and their contamination are common. Subsequently, this leads to the inability to complete the task of identifying a person based on genetic characteristics. According to the researcher, in about 23% of cases, objects that did not contain DNA or degraded molecules were submitted for examination, and in 16% – they contained mixed DNA from more than two people. This situation develops due to mistakes

made by investigators at the stage of collecting traces of biological origin in cases of intentional murder [29]. In this regard, the need to improve the professional competence of investigators and forensic inspectors in relation to actions at the scene of an accident related to the detection and seizure of biological traces is actualised.

Fingerprint examination also plays a substantial role in establishing the identity of the criminal. This examination, as before, remains the most common type of special investigation, due to the fact that fingerprints are a “conventional component” of the scene of an accident for various types of crimes. In addition, they are a source of valuable forensic information, in particular, about the person who left them, the time and features of the mechanism of trace formation (certain circumstances of a criminal event, and anatomical and functional features of a certain person) [30].

In the case of detection and collection of smell traces at the scene of the incident, a forensic odorological examination can be assigned for the identification of a possible criminal. If there is a video recording from the scene of the incident, which shows the criminal's face in the proper quality and appropriate angle, the investigator should appoint a forensic portrait examination. The need to appoint forensic examinations is due to the fact that based on the results of their conduct, an expert opinion will be obtained, which is a procedural source of evidence.

A non-procedural method of identity identification is the use of Open source intelligence (OSINT) technologies – intelligence based on the analysis of open sources of information, and HUMINT (human intelligence).

OSINT is a form of the process of intelligence collection management, which involves their search and selection from public publicly available sources, obtaining and analysing information, forming an intelligence document for making an appropriate decision [31]. HUMINT technologies include: social media monitoring, surveys, and social engineering. These technologies are now being actively implemented in the field of investigation of criminal offences.

Establishing the motives of the criminal's identity takes place by conducting interrogations of the suspect and witnesses. If there is voluntary consent from the suspect, a polygraph can be used against them, in particular, during a forensic psychiatric examination or psychophysiological study. The analysis of the state of mind at the time of committing a crime should be conducted by specialists, it is possible during a forensic psychiatric examination.

Thus, the choice of certain investigative and procedural actions that are appropriate to conduct to perform a specific tactical task depends on the existing investigative situation, and the decision to conduct them can be made only if the possibility of achieving the intended result is recognised.

## ■ Conclusions

The conducted study provided an opportunity to formulate the following conclusions:

1. Investigation of murders committed using firearms is characterised by a high level of complexity because a substantial number of tactical tasks are subject to execution, and a wide range of circumstances are subject to clarification. Tactical tasks to be performed at the initial stage of investigation of murders of this type include: establishing the identity of the victim; establishing the nature of the event of a criminal offence; establishing the place and time of the commission of a criminal offence; establishing the method of committing a criminal offence; investigating the crime weapon; establishing the identity of the criminal and the motives for committing the crime. The implementation of these tactical tasks is possible through the joint activities of various subjects, including carriers of special knowledge.

2. Identification of the victim occurs mainly during the inspection of the scene and the corpse. The need to immediately complete this task is due to the need to ensure the implementation of the correct legal qualification of the event that occurred, and therefore the choice of the appropriate research area.

3. Establishing the nature of the event of a criminal offence in the context of the conducted research involves solving the question “what happened?”: was the intentional murder, negligent homicide, or suicide committed. The commission of a certain act can be confirmed by certain circumstances that are identified during the inspection, based on the results of investigative actions or relevant forensic examinations.

4. Establishing the place and time of committing a criminal offence is possible by identifying eye-witnesses or witnesses of a criminal offence, investigating video recordings of surveillance cameras that conducted continuous video recording, or appointing forensic examinations. In the process of investigating intentional murders committed using firearms, the time of committing a criminal offence can be determined by conducting a forensic medical examination, because it is often connected with the moment of death. The place of murder, according to the results of the analysis of investigative and judicial practice, often coincides with the place of discovery of the body.

5. Establishing the method of committing a criminal offence in the context of this study is not considered in detail, since this subject is quite complex and requires a separate thorough analysis. It is emphasised that the proven technique of investigation of the method of committing a criminal offence is the appointment of comprehensive forensic examinations.

6. The examination of the murder weapon requires the involvement of appropriate specialists. Forensic ballistics examinations should be considered the most effective method. A substantial number of murders are committed using firearms that are in illegal circulation, which complicates the investigation process and requires appropriate measures to be taken by law enforcement agencies to prevent their distribution and withdrawal from free circulation.

7. Establishing the identity of the criminal and the motives for committing a crime is one of the most difficult tasks, the implementation of which begins from the moment of conducting a primary investigative (search) action – examining the scene of the incident and the corpse. The effective and thorough inspection ensures the identification of various types of traces, which, according to the results of a competent examination, can acquire the status of evidence. Direct identification of the criminal is possible during molecular genetic, fingerprint, and portrait examinations, and it can also be conducted in a non-procedural form.

This study attempts to determine the typical tactical tasks to be performed at the initial stage of the investigation of murders committed using firearms and the most optimal ways to implement them. Since this issue is extremely relevant in Ukraine, it requires further thorough research.

## ■ References

- [1] Barati, M., & Adams, S. (2019). Enhanced penalties for carrying firearms illegally and their effects on crime. *Economic Analysis and Policy*, 63, 207-219. doi: 10.1016/j.eap.2019.07.001.
- [2] Bondar, V.S. (2013). *Methods of investigating premeditated murders committed with firearms*. Luhansk: RVV LDUVS im. E.O. Didorenka.
- [3] Europe: Crime Index by Country 2020 Mid-Year. (n.d.). Retrieved from [https://www.numbeo.com/crime/rankings\\_by\\_country.jsp?title=2020-mid&region=150/](https://www.numbeo.com/crime/rankings_by_country.jsp?title=2020-mid&region=150/).
- [4] Hamill, M.E., Hernandez, M.C., Bailey, K.R., Zielinski, M.D., Matos, M.A., & Schiller, H.J. (2019). State level firearm concealed-carry legislation and rates of homicide and other violent crime. *Journal of the American College of Surgeons*, 228(1), 1-8. doi: 10.1016/j.jamcollsurg.2018.08.694.
- [5] Holubovych, L.L., Olkhovskiy, V.O., & Herasymenko, O.I. (2021). *Fundamentals of forensic medicine*. Kharkiv: FOP Brovin O.V.
- [6] Husieva, V.O. (2021). *Theoretical bases of a methods of investigating crimes against authority of public authorities in terms of law enforcement activity. Doctor's thesis*. Kharkiv: Kharkiv National University of Internal Affairs.
- [7] Khylyk, A.O., Zvonar, Ya.P., & Sukhope, P.S. (2020). Possibilities of application of computer technologies in modeling of fire damages in forensic medicine. In *International Medical Students' Conference in Poltava: Proceedings of the International Scientific Conference* (p. 154). Poltava: National University.
- [8] Khoshnood, A. (2018). Firearm-related violence in Sweden – a systematic review. *Aggression and Violent Behavior*, 42, 43-51. doi: 10.1016/j.avb.2018.07.008.
- [9] Kovalenko, A.V. (2018). *Investigation of encroachments on the lives and health of journalists*. Sievierodonetsk: RVV LDUVS im. E.O. Didorenka.
- [10] Criminal Procedural Code of Ukraine, No. 4651-VI. (2012, April). Retrieved from <http://zakon0.rada.gov.ua/laws/show/4651-17>.
- [11] Melnyk, S., & Hretskykh O. (2020). Impact if the legislative gap on the special law on weapons on the development of domestic judicial ballistics. *Law Bulletin*, 15, 156-163. doi: 10.32850/LB2414-4207.2020.15.21.
- [12] Order of the Ministry of Internal Affairs of Ukraine “About the statement of the Instruction on the procedure for involvement of employees of bodies of prejudicial investigation of police and Expert service of the Ministry of Internal Affairs of Ukraine as experts for participation in carrying out inspection of a scene”, No. 1339. (2016, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1392-15#Text>.
- [13] Nevhad, V.V. (2019). *Methodology of Investigating Intentional Homicides Committed in a Manner Dangerous to the Lives of Many Individuals. Extended abstract of candidate's thesis*. Kharkiv: Kharkiv National University of Internal Affairs.

- [14] Peresada, O. (2021). Determination of premeditated murder from suicide and accident: theoretical and methodological approaches. *Law Journal of Donbass*, 2(75), 88-95. doi: 10.32366/2523-4269-2021-75-2-88-95.
- [15] Rozhyk, E.M. (2020). The relationship between the method of committing a crime and the consequences of the crime. *Law and Society*, 6-2, 200-207. doi: 10.32842/2078-3736/2020.6.2.2.30.
- [16] Rzhavska, N.F., & Kozhushko, O.O. (2011). *Open Source Intelligence*. (n.d.). Retrieved from <http://ena.lp.edu.ua/bitstream/ntb/19232/1/53-Rzhavska-257-261.pdf>.
- [17] Senchenko, N.M., & Prorochenko, V.V. (2019). Forensic investigation of the traces of the shot and their significance in the disclosure of criminal offenses. *Comparative and Analytical Law*, 5, 395-398. doi: 10.32782/2524-0390/2019.5.102.
- [18] Shevchuk, V.M. (2016). The value of tactical tasks for the construction and implementation of typical tactical operations in criminal proceedings. *National Law Journal: Theory and Practise*, 5, 204-207.
- [19] Simakova-Yefremian, E.B. (2017). *Theoretical-legal and methodological foundations of complex forensic research. Doctor's thesis*. Kharkiv: Kharkiv National University of Internal Affairs.
- [20] Sivaraman, J.J., Ranapurwala, S.I., Moracco, K.E., & Marshall, S.W. (2019). Association of state FIREARM legislation with female intimate PARTNER HOMICIDE. *American Journal of Preventive Medicine*, 56(1), 125-133. doi: 10.1016/j.amepre.2018.09.007.
- [21] Stansfield, R., Semenza, D., & Steidley, T. (2021). Public guns, PRIVATE violence: The Association of city-level firearm availability and intimate PARTNER homicide in the United States. *Preventive Medicine*, 148, article number 106599. doi: 10.1016/j.ympmed.2021.106599.
- [22] Statistical information for 2011-2020. (n.d.). Retrieved from <https://www.gp.gov.ua/ua/1stat>.
- [23] Stepaniuk, R.L. (2019). Specificities of the assignment of forensic molecular-genetic examination while investigating murders. *Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*, 3, 174-178. doi: 10.31733/2078-3566-2019-3-174-180.
- [24] Sukhomlyn, T., & Yurchyk, T. (2019). Forensic fingerprint examination in criminal proceedings. *Collection of scientific works of Kharkiv National Pedagogical University named after G.S. Skovoroda*, 30, 104-109. doi: 10.34142/23121661.2019.30.13.
- [25] Syvodied, I. (2020). Use of special knowledge and problems of appointment of forensic examinations in the investigation of intentional murder of service officials. *Juris Europensis Scientia*, 4, 176-180. doi: 10.32837/chern.v0i4.152.
- [26] Verbitska, M., & Hnativ, M. (2021). Some aspects of legal liability for offenses related to illegal handling of firearms in Ukraine. *Actual Problems of Law*, 1(25), 33-39. doi: 10.35774/app2021.01.033.
- [27] Yaremchuk, V. (2020). Some aspects of studying firearms at murder investigation. *Juridical Scientific and Electronic Journal*, 2, 430-433. doi: 10.32782/2524-0374/2020-2/111.
- [28] Law of Ukraine "On the National Police", No. 580-VIII. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19>.
- [29] Zamula, B. (2018). Criminalistics characteristics of institutions involved by foreigners in the territory of Ukraine. *Knowledge, Education, Law, Management*, 4(24), 296-304. doi: 10.5281/zenodo.2594783.
- [30] Zamula, B. (2020). Establishment of the event of murder as a circumstance to be established at the initial stage of the investigation of murders committed by foreigners on the territory of Ukraine. *Juridical Scientific and Electronic Journal*, 4, 303-306. doi: 10.32782/2524-0374/2020-4/73.
- [31] Zmiievska, Yu., & Savka, I. (2020). Development and up-to-date resources of forensic diagnostics of a kind of the main traumatic factor with gunshot wounds. *Clinical & Experimental Pathology*, 19, 1(71), 152-159. doi: 10.24061/1727-4338.

## ■ Список використаних джерел

- [1] Barati M., Adams S. Enhanced penalties for carrying firearms illegally and their effects on crime. *Economic analysis and policy*. 2019. No. 63. P. 207–219. doi: 10.1016/j.eap.2019.07.001.
- [2] Бондар В. С. Методика розслідування умисних вбивств, вчинених із застосуванням вогнепальної зброї: метод. рек. Луганськ: ПВВ ЛДУВС ім. Е. О. Дідоренка, 2013. 148 с.
- [3] Europe: crime index by country 2020 mid-year. URL: [https://www.numbeo.com/crime/rankings\\_by\\_country.jsp?title=2020-mid&region=150/](https://www.numbeo.com/crime/rankings_by_country.jsp?title=2020-mid&region=150/).
- [4] Hamill M. E., Hernandez M. C., Bailey K. R., Zielinski M. D., Matos M. A., Schiller H. J. State level firearm concealedcarry legislation and rates of homicide and other violent crime. *Journal of the american college of surgeons*. 2019.. Vol. 228 No 1. P. 1–8. doi: 10.1016/j.jamcollsurg.2018.08.694.
- [5] Основи судової медицини: навч.-метод. посіб. / Л. Л. Голубович, В. О. Ольховський, О. І. Герасименко. Харків: Бровін О. В., 2021. 535 с.
- [6] Гусєва В. О. Теоретичні основи методики розслідування злочинів проти авторитету органів державної влади у сфері правоохоронної діяльності: дис. ...д-ра юрид. наук: 12.00.09. Харків, 2021. 538 с.
- [7] Хилько А. О., Звонар Я. П., Сухопер П. С. Можливості застосування комп'ютерних технологій при моделюванні вогнепальних пошкоджень і ушкоджень в судовій медицині. *International medical students'conference in Poltava: матеріали Міжнар. студ. наук. конф. (Полтава, 2–3 квіт. 2020 р.)*. Полтава, 2020. 154 с.
- [8] Khoshnood A. Firearm-related violence in Sweden – a systematic review. *Aggression and violent behavior*. 2018. No. 42. P. 43–51. doi: 10.1016/j.avb.2018.07.008.
- [9] Коваленко А. В. Розслідування посягань на життя та здоров'я журналістів: монографія. Севєродонецьк: ПВВ ЛДУВС ім. Е. О. Дідоренка, 2018. 268 с.
- [10] Кримінальний процесуальний кодекс України: Закон України від 13 квіт. 2012 р. № 4651-VI. URL: <http://zakon0.rada.gov.ua/laws/show/4651-17>.
- [11] Мельник С., Грецьких О. Вплив законодавчого пробілу щодо спеціального закону про зброю на розвиток вітчизняної судової балістики. *Юридичний бюлетень*. 2020. № 15. С. 156–163. doi: 10.32850/LB2414-4207.2020.15.21.
- [12] Про затвердження Інструкції про порядок залучення працівників органів досудового розслідування поліції та Експертної служби Міністерства внутрішніх справ України як спеціалістів для участі в проведенні огляду місця події : наказ МВС України від 5 листоп. 2016 р. № 1339. URL: <https://zakon.rada.gov.ua/laws/show/z1392-15#Text>.
- [13] Невгад В. В. Методика розслідування умисних вбивств, вчинених способом, небезпечним для життя багатьох осіб: автореф. дис. ... канд. юрид. наук: 12.00.09. Харків, 2019. 22 с.
- [14] Пересада О. Відмежування умисного вбивства від самогубства та нещасного випадку: теоретико-методологічні підходи. *Правовий часопис Донбасу*. 2021. Вип. 2. № 75. С. 88–95. doi: 10.32366/2523-4269-2021-75-2-88-95.
- [15] Рожик Є. М. Співвідношення способу вчинення злочину та наслідків злочину. *Право і суспільство*. 2020. № 6–2. С. 200–207. doi: 10.32842/2078-3736/2020.6.2.2.30.
- [16] Ржевська Н. Ф., Кожушко О. О. Розвідка відкритих джерел (open source intelligence). URL: <http://ena.lp.edu.ua/bitstream/ntb/19232/1/53-Rzhevskaya-257-261.pdf>.
- [17] Сенченко Н. М., Пророченко В. В. Криміналістичне дослідження слідів пострілу та їх значення у розкритті кримінальних правопорушень. *Порівняльно-аналітичне право*. 2019. № 5. С. 395–398. doi: 10.32782/2524-0390/2019.5.102.

- [18] Шевчук М. Значення тактичних завдань для побудови та реалізації типових тактичних операцій у кримінальному провадженні. *Національний юридичний журнал: теорія та практика*. 2016. № 5. С. 204–207.
- [19] Сімакова-Єфремян Е. Б. Теоретико-правові та методологічні засади комплексних судово-експертних досліджень: дис. ... д-ра юрид. наук: 12.00.09. Харків, 2017. 503 с.
- [20] Sivaraman J. J., Ranapurwala S. I., Moracco K. E., Marshall S. W. Association of state firearm legislation with female intimate partner homicide. *American journal of preventive medicine*. 2019. Vol. 56. No 1. P. 125–133. doi: 10.1016/j.amepre.2018.09.007.
- [21] Stansfield R., Semenza D., Steidley T. Public guns, private violence: the Association of city-level firearm availability and intimate partner homicide in the United States. *Preventive Medicine*. 2021. No. 148. article number 106599. doi: 10.1016/j.ypmed.2021.106599.
- [22] Статистична інформація за 2011–2020 роки. URL: <https://www.gp.gov.ua/ua/1stat>.
- [23] Степанюк Р. Л. Особливості призначення судової молекулярно-генетичної експертизи під час розслідування вбивств. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2019. № 3. С. 174–178. doi: 10.31733/2078-3566-2019-3-174-180.
- [24] Сухомлин Т., Юрчик Т. Судово-дактилоскопічна експертиза у кримінальному провадженні. *Збірник наукових праць Харківського національного педагогічного університету імені Г. С. Сковороди*. 2019. № 30. С. 104–109. doi: 10.34142/23121661.2019.30.13.
- [25] Сиводєд І. Використання спеціальних знань і проблеми призначення судових експертиз під час розслідування умисних вбивств військовослужбовців під час проведення бойових дій. *Juris europensis scientia*. 2020. № 4. С. 176–180. doi: 10.32837/chern.v0i4.152.
- [26] Вербіцька М., Гнатів М. Деякі аспекти юридичної відповідальності за правопорушення, пов'язані з незаконним поводженням із вогнепальною зброєю в Україні. *Актуальні проблеми правознавства*. 2021. Вип. 1. № 25. С. 33–39. doi: 10.35774/app2021.01.033.
- [27] Яремчук В. О. Деякі питання дослідження вогнепальної зброї при розслідуванні вбивств. *Юридичний науковий електронний журнал*. 2020. № 2. С. 430–433. doi: 10.32782/2524-0374/2020-2/111.
- [28] Про Національну поліцію: Закон України від 2 лип. 2015 р. № 580-VIII. URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text>.
- [29] Замула Б. Криміналістична характеристика вбивств, учинених іноземцями на території України. *Knowledge, education, law, management*. 2018. Вип. 4. № 24. С. 296–304. doi: 10.5281/zenodo.2594783.
- [30] Замула Б. Встановлення події вбивства як обставина, що підлягає встановленню на початковому етапі розслідування вбивств, учинених іноземцями на території України. *Юридичний науковий електронний журнал*. 2020. № 4. С. 303–306. doi: 10.32782/2524-0374/2020-4/73.
- [31] Змієвська Ю., Савка, І. Розвиток та сучасні можливості судово-медичної діагностики виду основного травмуючого фактора при вогнепальних ушкодженнях. *Клінічна та експериментальна патологія*. 2020. Т. 19. Вип. 1. № 71. С. 152–159. doi: 10.24061/1727-4338. XIX.1.71.2020.327.

## Особливості розслідування вбивств, вчинених із застосуванням вогнепальної зброї

Влада Олександрівна Гусєва

Харківський національний університет внутрішніх справ  
61080, просп. Льва Ландау, 27, м. Харків Україна

■ **Анотація.** Мета дослідження – на підставі аналізу слідчої та судової практики, а також наукових праць українських й іноземних вчених визначити типові тактичні завдання, що підлягають виконанню на початковому етапі розслідування вбивств, вчинених із застосуванням вогнепальної зброї, та особливості їх реалізації. Для досягнення поставленої мети використано загальний діалектичний метод, а також спеціальні методи дослідження, зокрема: метод системного аналізу, порівняльно-правовий, системно-структурний. Наукова новизна дослідження полягає в тому, що на підставі аналізу наявних наукових праць за окресленим напрямом дослідження, а також матеріалів слідчої та судової практики розглянуто типові тактичні завдання, що підлягають виконанню на початковому етапі розслідування умисних вбивств, вчинених із застосуванням вогнепальної зброї. Висновки. Обґрунтовано позицію, згідно з якою діяльність щодо розслідування вбивств, вчинених із застосуванням вогнепальної зброї, вирізняється високим рівнем складності, адже під час їх розслідування необхідно виконати комплекс тактичних завдань. Акцентовано, що до таких завдань належать: встановлення особи потерпілого, характеру події кримінального правопорушення, місця та часу вчинення кримінального правопорушення, способу вчинення кримінального правопорушення; дослідження знаряддя злочину; встановлення особи злочинця та мотивів вчинення злочину. Констатовано, що тактичні завдання залежать від слідчої ситуації, яка склалася, спрямовані на перевірку чи спростування слідчих версій. Реалізація тактичних завдань під час розслідування можлива шляхом проведення комплексу слідчих (розшукових), негласних слідчих (розшукових) і процесуальних дій, а також окремих заходів забезпечення кримінального провадження. У контексті цього дослідження запропоновано найефективніші дії, які слід здійснювати, а також визначено деякі їхні можливості

■ **Ключові слова:** умисне вбивство; вогнепальна зброя; досудове розслідування; кримінальне провадження; тактичне завдання

UDC 343.14

DOI: 10.33270/01211203.28

## Current Issues an Examination Computer Hardware and Software Productsduring the Investigation of Crimes in the Use of Computers (Computer) Systems, Computer Networks and Telecommunication Networks

Bronislav B. Teplytskyi\*

National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine

■ **Abstract.** The purpose of the study is to investigate relevant issues of examination of computer equipment and software products during the investigation of crimes in the field of use of electronic computing machines (computers), systems, computer networks, and telecommunication networks. General and special scientific methods are used to achieve this goal. In particular, the method of analysis, system-structural, and statistical methods provided an opportunity to examine the place of the expertise of computer equipment and software products in the system of forensic examinations, and identify its tasks and varieties. The main subtypes of forensic expertise of computer equipment and software products are identified: an examination of computer equipment, software products, information, and information-computer research. The basic rules and requirements for the formation of questions for the forensic expert are proposed, an approximate list of issues that can be resolved during the research, and typical mistakes made by the initiators of conducting examinations of computer equipment and software products are highlighted. It is established that forensic examination of computer equipment and software products is a type of computer-technical forensic examinations that belongs to the class of engineering and technical forensic examinations and is internally divided into three subtypes. The basic requirements and rules for formulating questions for solving them within the framework of expertise of computer equipment and software products have been developed. Typical errors in the appointment of forensic examinations of computer equipment and software products are identified

■ **Keywords:** special knowledge; forensic examination; examination of computer equipment and software products; investigation of crimes; appointment of expert examinations

### ■ Introduction

The active introduction of computer equipment and computer technologies in the official activities of state bodies and private organisations is accompanied by the spread of a range of criminal offences related to their use.

Tens of thousands of criminal offences are committed annually in the world using computer technologies, software tools and other technological equipment. According to the authoritative American

company McAfee, specialising in computer security, and the Centre for Strategic and International Studies (CSIS), illegal interference in the operation of electronic computing machines (computers), systems and computer and telecommunications networks during 2020 cost the world economy over a trillion dollars, or 820 billion euros. Compared to 2018, researchers report an increase of 50 per cent. One of the factors that contributed to the increase in the number of cybercrimes is that a substantial number of employees this year switched to remote work due to the pandemic caused by the spread of the SARS-CoV-2 coronavirus (COVID-2019), and have remote access to working computer systems [1].

The process of investigating criminal offences in this area often involves masking the illegal actions of offenders and other related persons. As elements of disguise, they use changing the virtual

### ■ Suggested Citation:

Teplytskyi, B.B. (2021). Current issues an examination computer hardware and software productsduring the investigation of crimes in the use of computers (computer) systems, computer networks and telecommunication networks. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 28-34. doi: 10.33270/01211203.28

■ \*Corresponding author

■ Received: 23.06.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

addresses of personal computers, using dynamic IP addresses, changing the identification data of individual elements of computer systems, committing criminal offences through remote control of technical means, etc.

Such types of criminal offences are latent in nature, they leave a limited number of traces that are difficult to detect, fix, and collect. These circumstances make it necessary to use modern special knowledge in the field of computer and information technologies for the purpose of investigating criminal offences in the field of using electronic computing machines (computers), systems, computer networks and telecommunication networks. In the vast majority of cases, the appointment and conduct of computer-technical forensic examinations is a necessary condition for an effective investigation of criminal proceedings.

Problematic aspects related to countering, identifying, using special knowledge, and investigating crimes in the field of using electronic computing machines (computers), systems, and computer and telecommunication networks were investigated by such researchers as: V.V. Areshonkov, V.M. Atamanchuk, V.M. Butuzov, A.A. Vozniuk, V.G. Honcharenko, I.V. Hora, M.V. Hutsaliuk, A.V. Ishchenko, O.V. Kopan, O.V. Kravchuk, S.A. Kuzmin, V.I. Osadchyi, M.A. Pogoretskyi, A.A. Sakovskyi, Ye.D. Skulysh, O.A. Fedotov, V.G. Khakhanovskyi, D.M. Tsekhan, S.S. Cherniavskyi, Yu.M. Chornous, V.P. Shelomentsev, M.G. Shcherbakivskyi, O.M. Yurchenko, and others.

Notably, today there is a lack of thorough research on theoretical and practical issues related to using modern information technologies directly in forensic expertise during computer-technical forensic examinations, the definition of their tasks and objects.

*The purpose of the study* is to conduct a systematic analysis of the features of the appointment of forensic examinations of computer equipment and software products in the investigation of crimes with the use of electronic computing machines (computers), systems, computer and telecommunication networks. The following tasks were set to achieve this goal:

- 1) determine the place of examinations of computer equipment and software products in the system of forensic examinations, outline its varieties;
- 2) develop rules and requirements for the formulation of questions for a forensic expert when appointing an expert examination of computer equipment and software products;
- 3) identify typical errors in the appointment of forensic examinations of computer equipment and software products.

The main subtypes of forensic expertise of computer equipment and software products are

identified: an examination of computer equipment, software products, and information-computer research. The basic rules and requirements for the formation of questions for the forensic expert are proposed, an approximate list of issues that can be solved within the framework of the study, and typical mistakes made by the initiators of conducting examinations of computer equipment and software products are highlighted.

## ■ Results and Discussion

Investigation into the use of electronic computing machines (computers), systems, and computer and telecommunication networks is the process of investigating, analysing, and recovering critical forensic digital data from networks involved in an attack. This can be the Internet and (or) a local network – to identify the authors of digital crimes and their true intentions.

Investigators of this category of criminal offences must be computer science experts who understand not only software, file and operating systems but also how networks and equipment work. They need to be sufficiently knowledgeable to determine how these components interact, form a complete picture of what happened, why it happened, when it happened, who exactly committed the crime, and how victims can further protect themselves from these types of cyber threats [2].

One of the most effective and, undoubtedly, decisive means (sources of evidence) in the investigation of such crimes is the examination of computer equipment and software products, which is actively used by law enforcement agencies in different countries.

To effectively use the capabilities of forensic examination of computer equipment and software products during the investigation of criminal offences, it is necessary, not only to have information about the possibility of solving a range of issues (which is also important) but also about its place in the system of forensic examinations.

In Ukraine, the implementation of forensic expert activities for conducting forensic examinations and expert research is regulated by the Constitution of Ukraine, the Law of Ukraine “On forensic expertise”, and other regulatory acts. Art. 1 of this Law states that forensic examination is a study based on special knowledge in the field of science, technology, art, crafts, etc. of objects, phenomena, and processes to provide an opinion on issues that are or will be the subject of judicial proceedings [3].

According to paragraph 1.2.2 of the Instruction on the appointment and conduct of forensic examinations and expert examinations, approved by the order of the Ministry of Justice of Ukraine of October 8, 1998, No. 53/5, the examination of computer

equipment and software products belongs to the class of forensic engineering-technical examinations [4].

Notably, another regulatory document, namely the Regulation on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the certification of forensic experts, approved by the order of the Ministry of Justice of Ukraine No. 301/5 of March 3, 2015, defines the indices of expert specialities. In accordance with the provisions of this document, index 10.9 "Examination of computer equipment and software products" is defined, which is classified as a type of computer-technical forensic examinations [5].

Thus, according to the results of the analysis of regulatory documents, it is concluded that the forensic examination of computer equipment and software products is a type of computer-technical forensic examinations, which belongs to the class of engineering-technical forensic examinations.

In recent years, new ways of committing crimes in the field of using electronic computing machines (computers), systems, computer networks and telecommunication networks have become widespread, among which the following can be distinguished: the use of so-called ransomware programmes, through which attackers encode data and demand a ransom for their decoding, phishing and DoS attacks, theft of email accounts, the use of spyware, and the theft of cryptocurrencies, both through unauthorised access to virtual client wallets and through online interception of payments, etc.

The legal basis for conducting a forensic examination of computer equipment and software products is the decision of the investigator (prosecutor, detective), issued based on Art. 243 of the Criminal Procedure Code of Ukraine or the decision of the investigating judge to conduct this type of examination in cases where it is necessary to establish factual data relevant to the criminal offence under investigation and related to the use of computer equipment or equipment, with its help, certain actions are conducted that can be detected as a result of using special knowledge in the field of programming and computer technologies [6].

Notably, part two of this Article of the criminal procedure legislation also gives the defence the right to involve a professional forensic expert in conducting research, however, on contractual terms.

Considering the issues of objects of forensic examination of computer equipment and software products, now there is no clear opinion among both researchers and practising specialists on this issue.

On this occasion, M.H. Shcherbakovskiy believes that the object of expertise is a categorical concept that has a number of features. Classification

of the object of expertise as a logical procedure involves the division of the concept, which results in the creation of a system of subordinate concepts and their distribution into classes. Such classification should be conducted on a certain basis according to the laws of logic; the basis should be substantial, essential for highlighting the essence of this concept as an integral system, which is the actual foundation for performing scientific and practical tasks [7].

According to V.G. Honcharenko & I.V. Hora, the objects of this type of research can be computer equipment with storage media (floppy disks, hard disks, CDR disks, flashcards, etc.), peripherals (printers, scanners, sound cards), and software products. The objects of this expertise can also be devices that are not computers in the classical sense of the word, for example, electronic cash registers, slot machines, card readers, etc. [8].

On the official website of The Independent Institute of Forensic Examinations, the objects of this type of expertise include computer equipment, "peripherals" (scanners, printers, plotters, etc.), various media (magnetic, optical, laser, etc.), software, other information stored on media and storage devices (permanent and operational), and organisers, pagers, mobile phones, and other devices that are manufactured and work based on technologies for building personal computers [9].

Representatives of the expert service of the Ministry of Internal Affairs of Ukraine to the objects of forensic examination of computer equipment and software products include hardware (computer system blocks, their components, servers, laptops, hard drives, flash drives, modems, routers, etc.), and software products (computer programmes, databases, etc.) [10].

In the vast majority of cases, the objects of forensic examination of computer equipment and software products in the investigation of crimes in the field of the use of electronic computing machines (computers), systems, computer networks and telecommunication networks are means of committing crimes. However, there are criminal offences in which the object of encroachment is not the actual material object, but the information contained in it, or on some medium, or software.

The objects of forensic examination of computer equipment and software products can be divided into three main types: hardware, software, and information objects [11].

Considering the types of objects of forensic expertise of computer equipment and software products under study, the features of the main tasks that are implemented, it is considered appropriate to distinguish three relatively independent subtypes of these forensic examinations:

- expertise of computer equipment (establishes circumstances and facts related to the functioning and operation of computer systems);
- expertise of software products (establishes circumstances and facts related to methodological, structural, and hardware features of software development and use);
- information and computer programmes expertise (establishes circumstances and facts related to information processing of the contents of file systems, their storage and reproduction on computer storage devices).

An important component of the successful outcome of the investigation of crimes in the use of electronic computing machines (computers), systems, and computer and telecommunication networks is the efficiency and completeness of the obtained sources of evidentiary information.

When appointing an expert examination of computer equipment and software products, it is necessary to focus on the stage of preparation for the appointment of a forensic examination, and also consider that due to incorrectly asked questions, difficulties may arise both in investigative and judicial practice, which, in turn, leads to the return of the decision to clarify the initiator of the expert examination or even a reasonable return of materials without their implementation.

Considering the above, persons initiating an expert examination should carefully and responsibly treat the initial stage of sending materials for expert research.

When determining the range of issues that should be clarified within the framework of a forensic examination, the initiator of the study must adhere to general rules and recommendations based on the classical principles of criminalistics, namely:

- not to go beyond the expert's special knowledge and not to have a legal nature;
- to be specific and concise;
- to have a logical sequence;
- to be characterised by completeness and have a complex character [12].

It is believed that when formulating questions for solution within the framework of expertise of computer equipment and software products, it is necessary to adhere to the following basic requirements and rules:

- use a generally accepted conceptual framework (do not use slang and semi-professional terminological units (for example, “terabyte”, “logs and passes”, “iron”, etc.);
- the question should be formulated as clearly as possible, so that the forensic expert can provide an unambiguous answer. They should not concern

the stages of Information research (description of the characteristics of information carriers and features of placing information on them, restoration and research of information among destroyed files is a mandatory stage of information research), have a legal area and go beyond the competence of a forensic expert of a certain expert specialty (special knowledge);

- adhere to the methodological sequence of questions (they must comply with the current methodological and technical base available for the forensic expert, be aimed at establishing the specific circumstances of the event related to the subject of proof, they should be formulated so that the costs (financial, technical, time, etc.) for conducting research when performing specific tasks of the investigation are minimal).

Based on the results of the analysis of forensic expert practice, a number of typical mistakes made by the initiators of conducting examinations of computer equipment and software products, which, as a result, complicates or makes it impossible to conduct it are distinguished. In particular:

- objects that do not and cannot contain information relevant for proof are submitted for examination;
- one resolution appoints forensic examinations for an excessive number of objects, making it impossible to examine them in a timely and proper manner;
- one resolution appoints expert examinations for various types of objects (servers and personal computers or mobile phones and “tablet” computers), for the study of which it is necessary to involve appropriate specialists;
- the forensic expert is provided with objects that, for objective reasons, cannot be properly examined (due to the lack of appropriate software, hardware, and devices).

Notably, computer systems (primarily servers) operate with so much information that their volumes can reach or even exceed university and academic libraries.

This means that the question of defining and installing an array of databases on it and the task of printing it out are incorrect

It should also be considered that the examination of computer equipment and software products does not solve the issue of the legality of user actions; licensing of software products; the cost of computer equipment and software products, since such issues go beyond the tasks facing this type of forensic examination.

## ■ Conclusions

It was determined that forensic examination of computer equipment and software products is a type of computer-technical forensic examinations belonging

to the class of engineering- technical forensic examinations, and is internally divided into three subtypes: examination of computer equipment, software products, and information-computer expertise.

The main requirements and rules for the formulation of questions for solving within the framework of the examination of computer equipment and software products were developed, including: the use of a generally accepted conceptual framework, clarity and unambiguity of formulation, methodological sequence of questions.

Typical mistakes made during the appointment of forensic examinations of computer equipment and software products are highlighted, namely: objects that do not contain and cannot contain information relevant for proof are provided for examination; within the framework of one resolution, examinations are appointed for an excessive number of objects; one resolution appoints examinations for various types of objects; objects are provided for the forensic expert, which for objective reasons cannot be properly investigated.

## ■ References

- [1] State Research Forensic Center. (n.d.). Retrieved from <https://dndekc.mvs.gov.ua>.
- [2] Honcharenko, V.H., & Hora I.V. (Eds.). (2015). *Expertise in the judicial process of Ukraine*. Kyiv: Yurinkom Inter.
- [3] Computer-technical examination. (n.d.). [nise.com.ua](http://nise.com.ua). Retrieve from <https://nise.com.ua/it-ekspertyza>.
- [4] Criminal Procedure Code of Ukraine. No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2269>.
- [5] Kurylin, I.R., & Atamanchuk, V.M. (2020). Current issues of criminology and forensic science. In *Proceedings of the All-Ukrainian Scientific and Practical Conference* (pp. 461). Kyiv: National Academy of Internal Affairs.
- [6] Lewis, J.A. (2020). *The hidden costs of cybercrime*. Center for strategic and international studies. Retrieved from <https://www.csis.org/analysis/hidden-costs-cybercrime>.
- [7] Order of the Ministry of Justice of Ukraine “Instruction on appointment and conduct of forensic examinations and expert examinations”. No. 53/5. (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0705-98#Text>.
- [8] Order of the Ministry of Justice of Ukraine “Regulations on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and certification of forensic experts” from March 3, 2015, No. 301/5. (n.d.). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0249-15#Text>.
- [9] Piaskovskiy, V.V., Chornous, Yu.M., & Samodin, A.V. (2020). *Forensics*. Kyiv: Pravo.
- [10] Salnyk, S.V., Storchak, A.S., & Kramskiy, A.Ye. (2019). Analysis of vulnerabilities and attacks on state information resources processed in information and telecommunication systems. *Information Processing Systems*, 2(157), 121-128. doi: 10.30748/soi.2019.157.17
- [11] Shcherbakovskiy, M.H. (2015). *Conducting and using forensic examinations in criminal proceedings*. Kharkiv: V dele.
- [12] Teplytskyi, B.B. (2019). Tasks, objects and issues of computer-technical forensic examination., *Legal Journal of the National Academy of Internal Affairs*, 2(18), 24-32. doi: 10.33270/04191802.24
- [13] Law of Ukraine “On forensic examination”. No. 4038a-XII. (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12#Text>.
- [14] Zybin, S.V. (2007). Model of information security object and model of information leakage channels. *Ukrainian Information Security Research Journal*, 4(36), 9. doi: 10.18372/2410-7840.9.4127.

**■ Список використаних джерел**

- [1] Державний науково-дослідний експертно-криміналістичний центр. URL: <https://dndekc.mvs.gov.ua>.
- [2] Експертизи у судочинстві України: наук.-практ. посіб. / за заг. ред. В. Г. Гончаренка, І. В. Гори. Київ: Юрінком Інтер, 2015. 504 с.
- [3] Комп'ютерно-технічна експертиза. URL: <https://nise.com.ua/it-ekspertyza>.
- [4] Кримінальний процесуальний кодекс України: Закон України від 13 квіт. 2012 р. № 4651-VI. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#n2269>.
- [5] Курилін І. Р., Атаманчук В. М. Тактичні особливості допиту в провадженнях про кіберзлочини. *Актуальні питання криміналістики та судової експертизи: матеріали Всеукр. наук.-практ. конф. (Київ, 19 листоп. 2020 р.)*. Київ: Національна академія внутрішніх справ, 2020. 461 с.
- [6] Lewis J. A. The hidden costs of cybercrime. Center for strategic and international studies. 2020
- [7] URL: <https://www.csis.org/analysis/hidden-costs-cybercrime>.
- [8] Інструкція про призначення та проведення судових експертиз та експертних досліджень: наказ Міністерства юстиції України від 8 жовт. 1998 р. № 53/5. URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text>.
- [9] Положення про Центральну експертно-кваліфікаційну комісію при Міністерстві юстиції України та атестацію судових експертів: наказ Міністерства юстиції України від 3 берез. 2015 р. № 301/5. URL: <https://zakon.rada.gov.ua/laws/show/z0249-15#Text>.
- [10] Криміналістика: підручник / В. В. Пясковський, Ю. М. Черноус, А. В. Самодін; за заг. ред. В. В. Пясковського. 2-ге вид., переробл. і доповн. Київ: Право, 2020. 752 с.
- [11] Сальник С. В., Сторчак А. С., Крамський А. Є. Аналіз вразливостей та атак на державні інформаційні ресурси, що обробляються в інформаційно-телекомунікаційних системах. *Системи обробки інформації*. 2019. Вип. 2. № 157. С. 121–128. doi:10.30748/soi.2019.157.17.
- [12] Щербаковський М. Г. Проведення та використання судових експертиз у кримінальному провадженні: монографія. Харків : В деле, 2015. 560 с.
- [13] Теплицький Б. Б. Завдання, об'єкти та питання комп'ютерно-технічної судової експертизи. *Юридичний часопис Національної академії внутрішніх справ*. 2019. Вип. 2 № 18. С. 24–32. doi: 10.33270/04191802.24.
- [14] Про судову експертизу: Закон України від 25 лют. 1994 р. № 4038а-XII. URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text>.
- [15] Зибін С. В. Модель об'єкта захисту інформації і моделі каналів витоків інформації. *Ukrainian information security research journal*. 2007. Вип. 4. № 36. doi:10.18372/2410-7840.9.4127.

## **Актуальні питання призначення експертизи комп'ютерної техніки і програмних продуктів під час розслідування злочинів у сфері використання електронно-обчислювальних машин (комп'ютерів), систем, комп'ютерних мереж і мереж електрозв'язку**

**Броніслав Броніславович Теплицький**

Національна академія внутрішніх справ  
03035, Солом'янська площа, 1, м. Київ, Україна

■ **Анотація.** Мета статті полягає в спробі дослідити актуальні питання проведення експертизи комп'ютерної техніки та програмних продуктів під час розслідування злочинів у сфері використання електроннообчислювальних машин (комп'ютерів), систем, комп'ютерних мереж і мереж електрозв'язку. Для досягнення поставленої мети використано загальнонаукові та спеціальні методи, які є засобами наукового пошуку. Зокрема, метод аналізу, системно-структурний і статистичний методи надали можливість дослідити місце експертизи комп'ютерної техніки та програмних продуктів у системі судових експертиз, виокремити її завдання й різновиди. Визначено основні підвиди судової експертизи комп'ютерної техніки та програмних продуктів: дослідження комп'ютерної техніки, дослідження програмних продуктів, інформаційно-комп'ютерні дослідження. Запропоновано базові правила й вимоги до формування питань судовому експерту, а також орієнтовний перелік питань, що можуть бути вирішені під час дослідження, виокремлено типові помилки, яких припускаються ініціатори проведення експертиз комп'ютерної техніки та програмних продуктів. З'ясовано, що судова експертиза комп'ютерної техніки та програмних продуктів є видом комп'ютерно-технічних судових експертиз, що належить до класу інженерно-технічних судових експертиз і внутрішньо поділяється на три підвиди. Розроблено основні вимоги та правила формулювання питань для вирішення в межах експертизи комп'ютерної техніки та програмних продуктів. Визначено типові помилки під час призначення судових експертиз комп'ютерної техніки та програмних продуктів

■ **Ключові слова:** спеціальні знання; судова експертиза; експертиза комп'ютерної техніки і програмних продуктів; розслідування злочинів; призначення експертиз

UDC 343.148; 343.35  
DOI: 10.33270/01211203.35

## Conducting an Audit as a Type of Use of Special Knowledge in the Investigation of Misappropriation, Embezzlement of Property, or Taking Possession of it by Abuse of Official Position

Oksana A. Semeniuk\*

National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine

■ **Abstract.** The purpose of the study is to investigate audit as a type of use of special knowledge in the investigation of misappropriation, embezzlement of property, or seizure of it by abuse of official position; highlight the grounds for appointment, mechanism for conducting, and registration of audit results in criminal proceedings; determine the status of an auditor conducting an audit during a pre-trial investigation. The study used a set of scientific methods: terminological, system-structural, formal-logical, and comparative-legal. It is established that conducting an audit is a type of procedural form of using special knowledge in criminal proceedings. The auditor, as an official of the state financial control body that conducts an audit in accordance with the procedure established by law, is a specialist in criminal procedure. The auditor specialist has special economic, accounting, commodity science knowledge, special knowledge in the field of financial and budget reporting, knowledge and skills in the field of forensic documentation. Audit during the investigation of misappropriation, embezzlement of property, or seizure of it by abuse of official position is a method of collecting evidence that, together with other data, constitutes the subject of proof in criminal proceedings. Conducting audits is an effective means of identifying embezzlement by officials and signs of its concealment. For the audit during the investigation of misappropriation, embezzlement of property, or seizure of it by abuse of official position, in addition to the auditor, it is advisable to involve other specialists

■ **Keywords:** audit; auditor; specialist; special knowledge; misappropriation; embezzlement of property; taking possession of property; abuse of official position; embezzlement by officials

### ■ Introduction

Property is the economic basis for the existence of any society, and the inalienable right to be an owner is recognised as one of the most important guarantees for the exercise of individual rights and freedoms.

Among the criminal offences against property, crimes related to misappropriation, embezzlement of property, or seizure of it by abuse of official position are distinguished. The danger of them lies in the fact that they are committed on a substantial scale, mostly by officials using the corruption component, and they are mostly ongoing. Certain difficulties in practical activity arise during the qualification of relevant criminal acts, which are

distinguished by the adjacency of such compositions as abuse of official position, abuse of official authority, official forgery [1; 2].

In 2020, 11,160 criminal offences on misappropriation, embezzlement of property, or seizure of it by abuse of official position were registered in Ukraine. Only 5,676 (50.9%) of them were served with a notice of suspicion. 4623 criminal proceedings were sent to the court with an indictment, and 1402 proceedings were closed [3].

The results of the courts' consideration of criminal proceedings under Art. 191 of the Criminal Code of Ukraine indicate the need to improve pre-trial investigation, primarily through the use of special knowledge by the investigator, the effective use of assistance from knowledgeable persons, depending on their forms and types.

Investigations of criminal offences related to misappropriation, embezzlement, or seizure of property by officials, in the vast majority of cases require audits and inspections at the relevant enterprises and institutions, and in cases of investigation

---

#### ■ Suggested Citation:

Semeniuk, O.A. (2021). Conducting an audit as a type of use of special knowledge in the investigation of misappropriation, embezzlement of property, or taking possession of it by abuse of official position. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 35-47. doi: 10.33270/01211203.35

■ \*Corresponding author

■ Received: 06.07.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

of abuse of the right when using the legal arrangement by persons controlling it [4].

The analysis conducted shows that they considered the appointment and conduct of audits and inspections in the investigation of criminal offences in general or individual groups. In recent years, a number of changes and additions have been made to the criminal procedure legislation regarding the possibility of appointing audits of the financial and economic activities of legal entities. Currently, in investigative practice, there are certain difficulties in attracting auditors to verify facts that may serve as a basis for initiating criminal proceedings or form the basis for suspicion of officials who have committed official embezzlement.

These factors led to the need to consider modern approaches to the forms and types of use of special knowledge in criminal proceedings, in particular, during the investigation of criminal offences under Art. 191 of the Criminal Code of Ukraine, and the place of audit among them.

*The purpose of the study* is to identify the place of audit among the forms and types of use of special knowledge in the investigation of a criminal offence under Art. 191 of the Criminal Code of Ukraine; highlight the importance of audit results in the process of proof in criminal proceedings; determine the status of the auditor as a subject involved in the audit during criminal proceedings; outline the specific features of the auditor's involvement of other specialists during the audit.

Conducting an audit is a separate type of procedural form of using special knowledge in the investigation of criminal offences. Audit is absolutely important in the investigation of misappropriation, embezzlement of property, or seizure of it by abuse of official position, it serves as the basis for collecting evidence, which together with other data constitute the subject of proof in criminal proceedings under Art. 191 of the Criminal Code of Ukraine. The expediency of its use and content are primarily determined by the tasks of the investigation that the investigator faces in the framework of specific criminal proceedings.

## ■ Results and Discussion

The use of special knowledge in criminal proceedings involves forms, types, levels, and subjects. The form of using special knowledge in criminal proceedings should be interpreted as an external manifestation of their essence, which is determined by the content of this knowledge and finds its practical implementation in the investigation of criminal offences.

During the investigation of criminal offences, the use of special knowledge is conducted by: attract-

ing specialists to take part in procedural and other activities; conducting forensic examinations; conducting various inspections, surveys; obtaining certificates and consultations from knowledgeable persons; requesting and using documents created by such persons in the course of their official activities; interrogating specialists as witnesses or forensic experts, if they took part in conducting forensic examinations [5].

Consideration of one broad form of a forensic examination [6] shifted to differentiation of forms into those that are provided for or not provided for in the code of Criminal Procedure, by whether the results have or do not have evidentiary value, by the subject of their use, etc. [7].

The procedural forms, in particular, those provided for by the Criminal Procedure Code of Ukraine, include the following: involvement of a specialist in conducting investigative actions; appointment of forensic examinations; interrogation of an expert. Generally describing the procedural forms of using special knowledge in criminal proceedings, they should include the involvement of knowledgeable persons directly specified in the criminal procedure law, regardless of the presence of procedural powers, rights, and obligations [8].

In some scientific sources, the forms of using special knowledge in criminal proceedings are divided into procedural and non-procedural. Many controversial issues regarding non-procedural forms of using special knowledge are highlighted. These include the position of V.K. Lysychenko and V.V. Tsyrcal [9], B.V. Romaniuk [10], and other researchers.

According to B.M. Bishmanov, "the terms "non-procedural" and "indefinite and not regulated by the criminal procedure law forms of using special knowledge" are unacceptable concepts. How can there be a "non-procedural" form of using special knowledge in procedural activities? The use of special knowledge can only be in a procedural form" [11].

Therewith, outside the procedural form of investigation is the use of special knowledge, skills, as "providing knowledgeable persons with reference and information assistance; conducting consultations by a specialist; conducting special studies of objects and documents before initiating a criminal case; training by a specialist of investigators for modern techniques and methods of investigating traces, working with new scientific and technical means, and their implementation by a specialist in investigative activities; involvement of a specialist in the development of preventive proposals" [11].

From the position of the current Criminal Procedure Code of Ukraine, notes E.D. Lukianchykov, the consulting form of using special knowledge should be considered a procedural form. "In such

circumstances,” the researcher claims, “the grounds for the activities of the subjects of their use are unclear and the evidentiary value of information obtained by non-procedural means is questioned, that is, in this case they will be illegal” [7].

According to V.P. Bakhin and O.O. Volobuieva, the relations that arise between an investigator and a specialist are procedural and non-procedural in nature, depending on the forms of their joint activities, which can be defined by the Criminal Procedure Code of Ukraine or developed by practice [12].

Procedural and non-procedural forms distinguish the procedure for obtaining information. According to its importance in proof, it is divided into evidentiary and orientation (organisational-tactical) information. Evidentiary information covers information about the circumstances to be proved in criminal proceedings, that is, circumstances related to the subject of proof (Art. 91 of the Criminal Procedure Code of Ukraine). Orientation information can be obtained in both procedural and non-procedural ways. It is used for organisational-tactical purposes in the investigation process (putting forward versions, determining the areas of the investigation, planning investigative actions, predicting the possible line of behaviour of participants in the investigation, etc.), and during the examination of evidence [13].

Therefore, it is advisable to refer to the form of using special knowledge, during which the investigator receives reference and consulting assistance, recommendations for the use of certain forensic techniques, data from information-communication sources, etc as organisational.

The analysis of the current legislation and various opinions of researchers gives grounds for concluding that audits and inspections belong to the procedural form of using special knowledge in criminal proceedings since they are conducted during criminal proceedings, and documents drawn up based on the results of their conduct are attached to the case and, together with other collected evidence, serve to establish the circumstances that are subject to proof.

Most researchers believe that audits refer to the procedural form of using special economic knowledge [14].

Researchers O.O. Bondarenko [15], A.M. Holdman [16], G.G. Muminova-Savina [17], O.V. Selina [18] refer to revisions as a mixed form of using specialised knowledge. In their opinion, the audit is an action of an administrative-legal nature, which is conducted in a criminal procedural form.

Researchers A. Dulov [19], V.I. Halushkin [20], Yu.O. Kalinkin [21], I.M. Sorokotiagin [22], L.G. Shapiro [23] argue that conducting an audit in criminal

proceedings should be recognised as an independent form of using special knowledge, which, if appointed by an investigator or prosecutor, loses its administrative nature and turns from means of economic control into a criminal procedural action, that is, they believe that conducting an audit is a procedural action.

In the forms of using special knowledge in criminal proceedings, there are different types. Types of use of special knowledge are implemented in various areas by performing specific actions of methodological and organisational-practical area by knowledgeable persons within their procedural and professional competence. The types of use of special knowledge within the framework of the procedural form include the involvement of an expert in conducting investigative (search) actions, assigning expert examinations, and conducting audits. Types of organisational form of using special knowledge are consulting activities; information exchange; verification activities based on forensic records.

The use of special knowledge varies depending on the forms chosen, and on the specific investigative situation.

During the investigation of criminal law violations, audit turns into a method of collecting evidence in criminal proceedings, which consists in checking the financial and economic activities of an institution, enterprise, or organisation by an investigator or prosecutor through an auditor. In particular, in accordance with Art. 93 of the Criminal Procedure Code of Ukraine, the prosecution and the defence collect evidence, among other things, by requesting and obtaining audit conclusions and audit reports. According to part 2 of Art. 99 of the Criminal Procedure Code of Ukraine, documents, provided that they contain the information provided for in part one of this article, may include audit conclusions and audit reports [24].

Thus, an audit is a system of control actions to establish the legality, expediency, and economic efficiency of business operations performed over a certain period of time, and the legality of actions of officials during their implementation. Through audits, they identify the facts of theft of inventory and money, confirm the facts of abuse of official positions, and identify participants in criminal actions [25]. It is also used to prove that in disputed legal relations there are violations of the local act of the organisation – the provision on the purchase of goods, works, and services [26]. First of all, this is relevant for the departmental segment of the field (system) of effective provision of countering abuse in public procurement [27].

An audit is a form of state financial control, which consists in documentary and factual verification

of certain complex or individual issues of financial and economic activity of the object of control, should ensure the identification of existing facts of violation of the law, the identification of officials and financially responsible persons accountable for their admission. It has a clear legal status that determines the procedure for initiating, appointing, conducting an audit, and registration, use, and appeal of its results [14].

The subject of audits and inspections includes factual data that must be established during control and which are fixed in advance in legislative and departmental regulations, and actual data on the state of compliance or violations of legal requirements, which must be established during the audit and inspection at certain control facilities. The specific subject of the audit is reflected in the audit programme, which is compiled during its preparation [28].

According to Art. 11 of the Law of Ukraine "On the basic principles of state financial control in Ukraine", a planned on-site audit is considered an audit in controlled institutions, which is provided for in the work plan of the state financial control body, it is conducted at the location of such a legal entity or at the location of the object of property rights in respect of which such a planned on-site audit is conducted [29].

By committing and concealing illegal possession of property, officials leave traces of their criminal activities in accounting and tax documents, registers, and financial reports of the enterprise, and documents concerning the powers of officials and record the procedure for passing and resolving cases in the enterprise, etc. [30]. These documents should be examined involving a specialist accountant (or auditor) to establish signs of unjustified or incorrect accrual, write-off or transfer of funds, inventory, setting tariffs, etc. [31].

One of the ways to investigate documents and collect evidence is to conduct unscheduled field audits by state financial control bodies.

An unscheduled on-site audit is considered an audit that is not provided for in the work plans of the state financial control body, it is conducted in the presence of at least one of the circumstances specified in part 5 of Art. 11 of the Law of Ukraine "On the basic principles of state financial control in Ukraine". In particular, law enforcement agencies apply mainly to the state financial control body on the grounds specified in paragraph 5 of part 5 of Art. 11 "in case of receipt of an order to conduct audits in controlled institutions from the Cabinet of Ministers of Ukraine, Prosecutor's offices, revenue and duties authorities, the National Police, the Security Service of Ukraine, the National Anti-Corruption Bureau of Ukraine, which contains facts

indicating violations of the laws of Ukraine by controlled institutions, the verification of compliance with which is assigned by law to the competence of state financial control bodies" [29].

An unscheduled on-site audit can only be conducted if there are grounds for conducting it based on a court decision. Until recently, investigators submitted petitions, which were coordinated by prosecutors, to investigative judges with a request to appoint unscheduled audits to clarify certain issues in criminal proceedings, in particular, under Art. 191 of the Criminal Code of Ukraine. Such a decision of the investigating judge is not subject to appeal.

Therewith, the situation when during a planned audit, the facts of official embezzlement in controlled enterprises are identified is notable. In these cases, the auditors of the State Audit Service of Ukraine (SASU) must properly inform law enforcement agencies about this.

Part 2 of Art. 12 of the Law of Ukraine "On the basic principles of state financial control in Ukraine" provides for the obligation of employees of the state financial control body to transfer audit materials to the law enforcement agencies in cases of detection of abuses and violations of the law. The law also obliges these persons to immediately report this to law enforcement agencies in case of seizure of documents in connection with their forgery or detected abuse [29]. In fact, this refers to specialists of the supervisory authority who found forged documents, embezzlement by officials, or other violations of the law during the audit or inspection.

Information of the State Audit Service is a reason for the initiation of criminal proceedings on the fact of misappropriation, embezzlement of property, or taking it by abuse of official position, entering relevant information in the Unified Registry of Pre-Trial Investigations (URPTI).

In this case, after receiving the results of inspections or audits of specialists, the investigator enters information about the commission of a criminal offence in the unified state register of legal entities and begins a pre-trial investigation in the general procedure. For example, according to the provided audit report of the Ternopil Regional Department of JSC "Oschadbank", the investigative department of the National Police Office in the Ternopil region in April 2019 launched a pre-trial investigation in criminal proceedings on the seizure of someone else's property by abuse of official position. During the pre-trial investigation, it was established that the controller-cashier of Oschadbank branch No. 100019/035 Person\_1 took possession of the bank's clients' funds by deception and abuse of official position. It is established that according to

the act of audit of the Ternopil Regional Department of JSC "Oschadbank" of reversed operations for accepting cash payments from individuals, on the facts of unauthorised reversal of payments by the controller-cashier of the Ternopil bank branch No. 10019/035 Person\_1, 23 suspicious operations of reversed underpayments for the purpose of payments in the amount of 150820.48 UAH were identified. During the pre-trial investigation, it was established that the suspect forged signatures in Oschadbank receipts [32]. Therefore, in recent years, in sectors with a substantial volume of transactions, such as banking, continuous audit combined using documentary data mining has become an important means of effectively managing the risk of official fraud [33].

An unscheduled on-site audit of the financial and economic activities of the object of control, which is conducted in criminal proceedings by the SASU body through documentary and factual verification, may be appointed by a court decision on granting permission or by a decision of an investigator, the prosecutor (in case of notification to officials of institutions that are being audited about suspicion of committing a criminal offence under Art. 191 of the Criminal Code of Ukraine).

In the practice of investigating misappropriation, embezzlement of property, or taking it by abuse of official position, there are cases when the investigator, sending a request to the state financial control body about the need to conduct an audit at a certain time, receives information that such an audit will be conducted later, in connection with the planned audit of the enterprise.

For example, in the criminal proceedings initiated under part 3 of Art. 191 of the Criminal Code of Ukraine, the decision of the investigating judge of the Vinnytsia City Court granted the investigator's request to conduct an unscheduled audit of the financial and economic activities of the Department of Construction, Urban Planning, and Architecture of the Vinnytsia Regional State Administration lasting 15 working days, starting from February 15, 2018. After sending this resolution to the state financial Inspectorate in the Vinnytsia region, the investigative unit was given a response that in February a planned audit of the Department for the previous two years will be conducted, during which the correct use of funds for the construction of a new school building will be checked first, and the law enforcement agency will be additionally informed about this after the audit is completed. The audit report was drawn up only on May 23, 2018, and subsequently sent to the investigator. Such a delay in the timing of the audit of financial and economic activities contributed to the concealment and

destruction of documents on their illegal actions by those responsible for embezzling budget funds. The criminal proceedings were closed due to the absence in the actions of officials of the Department of Construction, Urban Planning, and Architecture, deputies of the District Council and the school director of the composition of a criminal offence under Art. 191 of the Criminal Code of Ukraine [34].

The study considers this practice unacceptable for achieving the tasks of pre-trial investigation, and in some cases such that it may have signs of countering the investigation of criminal offences.

Audits, both planned and unscheduled, are conducted by other regulatory bodies specially authorised for such activities by SASU entities [35]. Subjects of control are knowledgeable persons in the financial, economic fields, and in other areas of knowledge used in conducting audits and inspections. In particular, an auditor is an official who is charged with conducting an audit, monitoring the financial and economic activities of a certain institution, organisation, or enterprise.

It is advisable to analyse the question of whether an auditor (an official of the State Audit Service body) who legally conducts an audit of a certain enterprise should be considered a specialist in the criminal procedural sense.

Further, the status of the auditor and their powers are considered. Paragraph 16 of the procedure for conducting an inspection of the SASU and its interregional territorial divisions defines the methods of conducting an audit, namely by:

a) documentary verification, which provides for control over constituent, financial, accounting (primary and consolidated) documents, statistical, financial, budget reporting, business contracts, administrative, and other documents of the object of control related to the planning and implementation of financial and economic activities, accounting, preparation of financial statements;

b) factual verification, which provides for control over the availability of monetary amounts, securities, strict reporting forms, current and non-current assets, other tangible and intangible assets by conducting an inventory, survey, and control measurement of the work performed, the correctness of applying the norms of consumption of raw materials, the output of finished products, and natural losses by organising control launches into production, control analysis of finished products and other similar actions involving relevant specialists of the state financial control body or other bodies, enterprises, institutions, and organisations [35].

Thus, auditors have knowledge in the field of economics: special economic knowledge, special

accounting knowledge, special knowledge in the field of financial and budget reporting.

Part 3 of Art. 12 of the Law of Ukraine “On the basics of State Financial Control” states that in case of seizure of documents in connection with their forgery or detected abuses, an employee of the state financial control body is obliged to immediately inform law enforcement agencies about this [29]. This provision of the Law certifies that the auditor must have special knowledge and appropriate skills in the field of forensic documentation.

The procedure for interaction between the SASU bodies and law enforcement agencies is regulated by a joint order of the main control and audit department (now – SASU ), the Ministry of Internal Affairs, the Security Service of Ukraine, and the Prosecutor General’s Office of Ukraine [36]. Its general provisions refer to ensuring effective interaction between the SASU bodies and law enforcement agencies on the consideration of their appeals, the appointment, organisation, and conduct of audits on them, the transfer of audit materials to law enforcement agencies on the initiative of the SASU bodies, feedback on the results of consideration of the transferred materials, the allocation of specialists from the SASU bodies, and other issues. In particular, employees of the SASU bodies can take part in inspections that they conduct in controlled institutions and other control facilities as specialists at the request of law enforcement agencies [36].

The grounds for law enforcement agencies to apply to the SASU bodies regarding the allocation of employees as specialists are the norms of the laws of Ukraine, the Criminal Procedure Code of Ukraine, etc. The rights and obligations of a service official who is involved as a specialist to take part in an investigative action are defined in the Criminal Procedure Code of Ukraine [36].

In paragraph 3.1 of the joint order, it is directly stated that when participating in the audit, the specialist uses their special knowledge and, within the scope of competence, provides advice, answers to the questions raised, records the facts of violation of legislation on the use and preservation of financial resources, non-current and other assets, the correctness of determining the need for budget funds and taking obligations, the state and reliability of accounting and financial reporting, determines the amount of material damage (losses) and officials caused as a result of actions or inactions of which violations of the law were committed and material damage (losses) were caused [36]. Therefore, the auditor involved as a specialist must have knowledge of commodity science.

Considering the analysis of modern legal sources, the legislator considers a specialist to be

a person who has special knowledge and skills in using technical or other means that can provide advice during pre-trial investigation and judicial proceedings on issues that require appropriate special knowledge and skills [24]. Investigating various schemes of embezzlement in the public sector, as M.I. Khavronyuk rightly notes, employees of the SASU bodies can take part in inspections conducted by law enforcement agencies in controlled institutions and other objects of control as specialists, that is, in this case, they have the rights and obligations outlined in Art. 71 of the Criminal Procedure Code of Ukraine [37].

Art. 71 of the Criminal Procedure Code of Ukraine provides that a specialist in criminal proceedings is a person who has special knowledge and skills and can provide advice and conclusions during pre-trial investigation and judicial proceedings on issues that require appropriate special knowledge and skills [24].

Thus, it is stated that an official of the state financial control body, who, in accordance with the procedure established by law, conducts an unscheduled field audit at an enterprise, institution, or organisation and discovers forged documents of financial and economic activity, facts of embezzlement by officials, or other signs of criminally punishable acts, is a specialist in criminal procedure.

When preparing for the audit, specialists of the state financial control body draw up an audit programme in two copies, agreed in writing with the law enforcement agency, in which they determine the name of the object of control, the subject, the period, and issues to be audited in accordance with the competence of the state financial control body [29]. This is how an interaction takes place between the specialist – the person who checks and the investigator, who, determining the issues that should be clarified during the audit, thus uses the special knowledge of a knowledgeable person.

In addition to the auditor, other specialists may also be involved in the audit. The specific features of attracting other specialists during audits in proceedings under Art. 191 of the Criminal Code of Ukraine directly depend on the object of encroachment and the methods of committing a crime. These factors are crucial for the decision of the investigator to identify specialists who should be recommended for inclusion in the audit team and use their special knowledge during control actions.

According to paragraph 6 of the regulations on the state audit service of Ukraine, this body has the right to involve researchers and specialists, employees of central and local executive authorities, state funds, local self-government bodies, enterprises,

institutions, and organisations in coordination with their managers to perform certain works, and to conduct control measurements of construction, installation, repair, and other works, control launches of raw materials and materials into production, control analyses of raw materials, materials, and finished products, and other inspections in accordance with the established procedure [38].

Part 1 of Art. 8 of the Law of Ukraine “On the basics of state financial control” among the main functions of the state financial control body defines the involvement on a contractual basis of qualified specialists of the relevant executive authorities, state funds, enterprises, institutions, and organisations [29].

For example, in Vinnytsia, a criminal offence under part 5 of Art. 191 of the Criminal Code of Ukraine was investigated. Officials of Ltd\_1 by abusing their official position through mechanical interference in the operation of metering devices during the production of canned fish in 2016 illegally turned in their favour about 65,959 m<sup>3</sup> of water of communal property worth 671,198.78 UAH. The production capacity was 120 thousand cans of canned fish per day. At the request of the investigator, the municipal enterprise “Vinnytsaoblvodokanal” on water consumption, used by Ltd\_1 during economic activities at the location of its main production facilities, a response was provided about the supply of 21,041 m<sup>3</sup> of drinking water in 2016. These data did not correspond to the indicators provided by state standards for the production by Ltd\_1 of canned food of specific types. The investigator issued a request for an unscheduled inspection of compliance with the requirements of environmental legislation in the field of natural resources protection. The investigating judge granted the request, entrusting its implementation to specialists of the State environmental inspectorate in the Vinnytsia region. The inspectorate fulfilled the court’s decision and drew up an act of verification of compliance with the requirements of environmental legislation in the field of protection of atmospheric air, water, and land resources for the management of waste and hazardous chemicals. The inspection was conducted by the chief specialist of the department of environmental control of water resources and atmospheric air, the state inspector for environmental protection. The inspector identified that on the territory of the enterprise there is a water intake borehole with a depth of 80 m with a flow rate of 3 m<sup>3</sup>/h and a tubular well with a depth of 18.5 m with a flow rate of 0.25 m<sup>3</sup>/h. A tubular well is used, but a borehole is not. There is no water meter on the tubular well, and the company does not record water intake, its use is not recorded in accounting logs. The inspection

report, which was drawn up by the involved specialist of the State environmental inspectorate, played an important role in conducting a number of interrogations, appointing forensic examinations, and other investigative (search) actions [39]. The procedure for interaction between the SASU bodies and law enforcement agencies provides that to conduct an audit, a referral is issued in two copies in a form established by The Ministry of Finance for each official of the state financial control body and the specialist involved. Before starting the audit, officials of the state financial control body and attracted specialists must issue a referral and a copy of the court decision to the head of the control object or their deputy, a receipt on a copy of the state financial control body (paragraphs 10-12) [36].

Based on the results of the audit, a report is drawn up. The audit report contains a list of officials of the state financial control body and involved specialists who conducted the audit. In the stating part of the audit report, information about the audit results in the context of each issue of the programme is covered, indicating for what period, in what way (selective, continuous), and according to what documents these issues were checked, the conclusion on the presence or absence of violations of the law, and, if any, the amount of losses caused to the state or the object of control as a result of such violations is determined in accordance with the procedure established by law [35].

Thus, the data set out in the audit report states the result of applying special knowledge by auditors and other specialists involved in the audit.

During the audit, the specialist verifies the specific issues included in the audit programme, determined in advance by the investigator (prosecutor) regarding the use and preservation of financial resources, non-current and other assets, the condition, reliability of accounting and financial statements for a certain period of time. Based on its results, a specialist of the SASU body can identify facts of violation of the law and identify the officials involved, financially responsible persons of the object of control that is being audited. It should be considered that the subject of misappropriation, embezzlement of property, or taking it by abuse of official position can be a financially responsible person who has certain powers in accordance with local regulatory legal acts [40].

The most common questions that need to be answered by a specialist auditor during the audit and which the investigator notes in the application for their appointment in criminal proceedings on misappropriation, embezzlement of property, or taking it by abuse of official position include the following:

1) were there any facts of embezzlement, misuse of budgetary or private funds that were under the economic jurisdiction of an official;

2) what are the inconsistencies between accounting registers and data from accounting reports and other reporting documentation of a legal entity?;

3) are there any facts of concealment and disguise of the illegal origin of funds, performing financial transactions with funds received as a result of illegal activities of an official;

4) which violations of the requirements of the current legislation regarding overestimation of the volume and cost of work performed under agreements concluded by authorised officials are identified, the amount of losses established;

5) are there any facts of the illegal conclusion of contracts and receipt of income from unlicensed activities;

6) have the facts of illegal transfer of funds to the current bank accounts of other legal entities been identified;

7) what inconsistencies were determined between documents confirming the amount of products produced and documents on finished products sold for a certain period of time, etc. [41].

The opinion of A.P. Zapototskyi, that in the process of preparing petitions, when determining audit tasks and questions to the auditor, it is advisable to involve a specialist in economics for consultation, is correct [42].

In case of detection of a shortage of funds, material values, and other violations with signs of embezzlement by officials, detection of fictitious documents, forgeries, and falsifications, the auditor withdraws the original documents until the end of the audit, which informs the initiator of the audit in writing. The results of control measurements, control launches of raw materials into production, laboratory tests, issued by specialists and signed by the management of the control object with appropriate certificates, are briefly stated in the main audit report [43].

On the facts of detected violations and shortages of cash and inventory, and in other cases when it is necessary, the auditor selects written explanations from officials and financially responsible persons of the enterprise that is being audited (checked) [44].

During the audit, the auditor single-handedly evaluates financial and economic operations for non-compliance with financial and legal norms and bears the responsibility provided for by law for the quality and completeness of the performance of the official order. None of the representatives of law enforcement agencies has the right to interfere in the work of the auditor (head of the audit group), oblige him to conduct certain control measures, influence the assessment of the results of audit actions [44].

After receiving the audit materials and for the purpose of evaluating them, the persons who conducted the relevant audit may be questioned by the investigator, prosecutor, or court regarding the circumstances of their work. In this case, the auditor specialist and other specialists involved acquire the status of witnesses with appropriate rights and obligations (Art. 65-67, 224 of the Criminal Procedure Code of Ukraine).

In particular, in the criminal proceedings on a criminal offence under part 3 of Art. 191 of the Criminal Code of Ukraine, it was established that officials of the village council together with employees of the company "K." during the reconstruction of the village school by entering false information in the acts of completed construction works regarding the salary of employees of the company during September-November 2015 seized budget funds. During the investigation, the investigating judge granted permission to conduct an unscheduled audit of the financial and economic activities of the village council. The audit was conducted by the state financial Inspectorate in the Vinnytsia region. After receiving the audit report, it became necessary to interrogate the auditor – the chief state financial inspector of the SFI in the Vinnytsia region, citizen Ch. During the interrogation of citizen Ch. as a witness, the amount of overstatement of the cost of paying for the reconstruction of the school, the process of signing acts of control measurements were additionally clarified [45; 46]. The obtained information was used by the investigator during the interrogation of suspects, and planning investigative (search) actions in criminal proceedings.

## ■ Conclusions

Conducting audits is an effective means of identifying certain ways of concealing a criminal offence under Art. 191 of the Criminal Code of Ukraine, in particular: falsification and (or) destruction of documentary sources of information, hiding and (or) masking information about the financial and economic activities of an enterprise, organisation, institution.

An auditor as an official of the state financial control body, in accordance with the procedure established by law, conducts a planned audit or is involved in an unscheduled field audit at an enterprise, institution, organisation, discovers forged documents of financial and economic activity, facts of embezzlement by officials, or other signs of criminally punishable acts, properly documents them, is a specialist in criminal procedure. The auditor specialist has special economic, accounting, and commodity science knowledge, special proficiency in the field of financial and budget reporting, and knowledge and skills in the field of forensic documentation.

In addition to the auditor, to conduct the audit during the investigation of the criminal offence, provided for in 191 of the Criminal Code of Ukraine, it is recommended to involve other specialists to conduct control measurements of construction, installation, repair, and other works, control launches of raw materials and materials into production, control analyses of raw materials, materials, and finished products, etc.

## ■ References

- [1] Artemova, A.N. (2020). Legal consequences of abuse of the right when using the structure of the corporation by its controlling persons. *Eurasian Law Journal*, 12(151), 143-145. doi: 10.46320/2073-4506-2020-12-151-143-145.
- [2] Bakhin, V.P., & Volobuieva, O.O. (2005). *Interaction of the investigator with specialists during the inspection of the scene (collection of information about the person who committed the crime): Scientific-practical recommendations*. Donetsk: Dyui.
- [3] Biriukov, S.Iu., Shinkaruk, V.M., & Shmatov, M.A. (2020). Organizational and tactical aspects of initiating a criminal case and conducting a preliminary investigation at the initial stage on the facts of causing property damage by deception or abuse of trust committed in the field of production, transmission and sale of electricity. *Legal Paradigm*, 19(1), 112-119. doi: 10.15688/lc.jvolsu.2020.1.16.
- [4] Bishmanov, B.M. (2006). *Expert and specialist in criminal proceedings*. Moscow: Mosk. Psikhol.-sots. in-t.
- [5] Bondarenko, O.O. (2004). *Procedural status of informed persons and their legal relations with the coroner and the investigator in criminal proceedings of Ukraine the dissertation. Candidate's thesis*. Kharkiv: National University.
- [6] Deborah, D.S, Kimberly, C.G., & Yezen, H.K., (2021). Auditor liability and excess cash holdings: Evidence from audit fees of foreign incorporated firms. *International Review of Financial Analysis*, 10. doi: 10.1016/j.irfa.2021.101947.
- [7] Dolinko, V.I. (2020). Criminal liability for abuse in procurement for state and municipal needs. *Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 3(51), 171-179. doi: 10.36511/2078-5356-2020-3-171-179.
- [8] Dulov, A.V. (1959). *Forensic theory issues*. Minsk: National University.
- [9] Galushkin, V.I. (2012). *Legal and forensic aspects of the use of audits and inspections in the detection and investigation of crimes*. Moscow: Iurlitinform.
- [10] Gangwani, M. (2020). Suitability of forensic accounting in uncovering bank frauds in India: An opinion survey. *Journal of Financial Crime*, 28(1), 284-299. doi: 10.1108/JFC-07-2020-0126.
- [11] Goldman, A.M. (1970). Legal grounds and forms of application of special knowledge in the Soviet criminal process. In *Expertise in the Work of a Defense Attorney: Proceedings of the Conference* (pp. 27-44). Leningrad: National University.
- [12] Kaban, İ. (2020). Central audit activities as a continuous audit approach in the Turkish banking sector: A case study. About frauds in savings accounts. *Öneri Dergisi*, 15(53), 254-275. doi: 10.14783/maruoneri.676406.
- [13] Kalinkin, Iu.A. (1980). Participation in criminal proceedings of persons with special knowledge. *State University Bulletin*, 3, 56-61.
- [14] Kamlyk, M.I. (2003). *Forensic accounting (4<sup>th</sup> ed., rev.)*. Kyiv: Atika.
- [15] Khavroniuk, M.I. (2019). *Corruption schemes: Their criminal qualification and pre-trial investigation*. Kyiv: Moskalenko O.M.
- [16] Criminal Procedural Code of Ukraine. No. 4651-VI. (2012, April). Retrieved from <http://zakon0.rada.gov.ua/laws/show/4651-17>
- [17] Lisichenko, V.K., & Tsirkal, V.V. (1987). *Use of special knowledge in investigative and judicial practice manual*. Kyiv: National University.
- [18] Lukianchykov, Ye.D. (2014). *Forms of using special knowledge under the new CPC of Ukraine*. Kyiv: KPI.
- [19] Matveev, I.V. (2019). Problems of qualification of abuse of office. In *Actual Problems of Combating Crime: Issues of Theory and Practice: Proceedings of the 22 International Scientific and Practical Conference* (pp. 241-243). Krasnoïarsk: Sibir. iurid. in-t. doi: 10.51980/2019\_1\_241.
- [20] Muminova-Savina, H.H. (2003). *Forensic accounting guide*. Kyiv: National University.
- [21] Order of the Main Control and Revision Department, the Ministry of Internal Affairs, the Security Service of Ukraine, the Prosecutor General's Office of Ukraine "About the statement of the Order of interaction between bodies of the state control and audit service and bodies of prosecutor's office, bodies of internal affairs and Security service of Ukraine". No. 346/1025/685/53. (2006, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1166-06#Text>.

- [22] Order of the Ministry of Emergencies and Protection of the Population from the Consequences of the Chernobyl Accident "About the statement of the Situation on the procedure for carrying out check of activity of emergency rescue services and their readiness to react to emergency situations". No. 61. (2002, March). Retrieved from <http://zakon5.rada.gov.ua/laws/show/z0309-02>.
- [23] Nehanov, V.V. (2018). *Use of conclusions of audits in criminal proceedings. Extended abstract of candidate's thesis*. Kyiv: National University.
- [24] Nehanov, V.V. (2018). *Use of conclusions of audits in criminal proceedings. Candidate's thesis*. Kyiv: National University.
- [25] Pasovets, E.Iu., & Demchenko, D.A. (2020). Theft by abuse of power: On the issue of reducing corruption risks in the authorities and departments of emergency situations. *Bulletin of the University of Civil Protection of the Ministry of Emergencies of Belarus*, 4(1), 106-114. doi: 10.33408/2519-237X.2020.4-1.106.
- [26] Piaskovskyi, V.V., Chornous, Yu.M., & Samodin, A.V. (2020). *Forensics textbook*. Kyiv: Pravo.
- [27] Ponikarov, V.D. (2005). *Forensic economic examination*. Kharkiv: Inzhen.
- [28] Resolution of the Cabinet of Ministers of Ukraine "On approval of the Regulations on the State Audit Service of Ukraine" No. 43. (2016, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/43-2016-%D0%BF#Text>.
- [29] Resolution of the Cabinet of Ministers of Ukraine "About the statement of the Procedure for carrying out inspection by the State financial inspection, its territorial bodies". No. 550. (2006, April). Retrieved from <http://zakon4.rada.gov.ua/laws/show/550-2006-п>.
- [30] Romaniuk, B.V. (2002). *Modern theoretical and legal problems of using special knowledge in pre-trial investigation. Candidate's thesis*. Kyiv: National University.
- [31] Selina, E. (2002). Forms of application of special knowledge in criminal proceedings. *Legality*, 5, 23-26.
- [32] Shapiro, L.G. (2007). *Procedural and forensic aspects of the use of special knowledge in the investigation of crimes in the field of economic activity*. Moscow: Iurlitinform.
- [33] Shcherbakovskyi, M.H. (2020). *Conducting and using forensic examinations in criminal proceedings*. Kharkiv: V dele.
- [34] Shramko, O.M. (2020). Conducting audits and inspections as types of use of special knowledge in the investigation of corruption crimes in Ukraine. *KELM*, 3-2, 133-138.
- [35] Shramko, O.M. (2021). *The use of special knowledge in the investigation of corruption offenses. Candidate's thesis*. Kyiv: National University.
- [36] Sorokotiagin, I.N. (1984). *Special knowledge in crime investigation*. Rostov n/D: National University.
- [37] Case No. 127/3790/16 in the archives of the Vinnytsia City Court of the Vinnytsia Region.
- [38] Case No. 127/929/16-k in the archives of the Vinnytsia City Court of the Vinnytsia Region.
- [39] Case No. 127/9504/17 in the archives of the Vinnytsia City Court of the Vinnytsia Region.
- [40] Case No. 607/11911/19 in the archives of the Ternopil Court of Appeal.
- [41] Vorobeva, S.V., & Chikalina, V.A. (2020). Features of signs of corpus delicti and their significance for qualifying abuse and abuse of office. *Trends in the Development of Science and Education*, 5, 22-25. doi: 10.18411/lj-05-2020-234.
- [42] Voronov, S.S., & Golubiatnikov, S.P. (2020). Use of economic information in identifying and proving abuse of power. *Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 4(52), 59-63. doi: 10.36511/2078-5356-2020-4-59-63.
- [43] Vronskaia, M.V., & Dibaeva, S.E. (2019). The use of the phenomenon of abuse of law in the practice of the Federal Antimonopoly Service of Russia in resolving disputes in the field of corporate procurement of goods, works and services. *Administrative and Municipal Law*, 4, 15-26. doi: 10.7256/2454-0595.2019.4.30200.
- [44] Unified report of the Office of the Prosecutor General on criminal offenses in Ukraine for January-December 2020. (n.d.). Retrieved from [https://www.gp.gov.ua/ua/stat\\_n\\_st?dir\\_id=114140&libid=100820&c=edit&c=fo](https://www.gp.gov.ua/ua/stat_n_st?dir_id=114140&libid=100820&c=edit&c=fo)
- [45] Law of Ukraine "On the basic principles of public financial control in Ukraine". No. 2939-XII. (1993, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2939-12#Text>
- [46] Zapototskyi, A. (2017). Unscheduled on-site audit as a way to use special knowledge in the investigation of crimes in the field of construction. *Entrepreneurship, Economy and Law* 5, 231-234.

## ■ Список використаних джерел

- [1] Артемова А. Н. Правовые последствия злоупотребления правом при использовании конструкции корпорации контролирующими ее лицами. *Евразийский юридический журнал*. 2020. Вып. 12. № 151. С. 143–145. doi: 10.46320/2073-4506-2020-12-151-143-145.
- [2] Бахін В. П., Волобуєва О. О. Взаємодія слідчого з фахівцями під час огляду місця події (збір інформації про особу, що скоїла злочин): наук.-практ. рек. Донецьк: ДЮІ, 2005. 72 с.
- [3] Бирюков С. Ю., Шинкарук В. М., Шматов М. А. Организационно-тактические аспекты возбуждения уголовного дела и производства предварительного расследования на первоначальном этапе по фактам причинения имущественного ущерба путем обмана или злоупотребления доверием, совершенных в сфере производства, передачи и сбыта электроэнергии. *Правовая парадигма*. 2020. Т. 19. № 1. С. 112–119. doi: 10.15688/lc.jvolsu.2020.1.16.
- [4] Бишманов Б. М. Эксперт и специалист в уголовном судопроизводстве. Москва: Моск. психол.-соц. ин-т, 2006. 324 с.
- [5] Бондаренко О. О. Процесуальний статус обізнаних осіб та їх правовідносини з дізнавачем і слідчим у кримінальному судочинстві України: дис. ... канд. юрид. наук: 12.00.09. Харків, 2004. 260 с.
- [6] Deborah D. S, Kimberly C. G., Yezen H. K. Auditor liability and excess cash holdings: Evidence from audit fees of foreign incorporated firms. *International review of financial analysis*. October 2021. doi: 10.1016/j.irfa.2021.101947.
- [7] Долинко В. И. Уголовная ответственность за злоупотребления при закупках для государственных и муниципальных нужд. *Вестник Нижегородской академии МВД России*. 2020. Вып. 3. № 51. С. 171–179. doi: 10.36511/2078-5356-2020-3-171-179.
- [8] Дулов А. В. Вопросы теории судебной экспертизы. Минск: Белорус гос. ун-т, 1959. 188 с.
- [9] Галушкин В. И. Правовые и криминалистические аспекты использования ревизий и проверок при выявлении и расследовании преступлений: монография. Москва: Юрлитинформ, 2012. 224 с.
- [10] Gangwani M. Suitability of forensic accounting in uncovering bank frauds in India: an opinion survey. *Journal of financial crime*. 2020. Vol. 28. No. 1. P. 284–299. doi: 10.1108/JFC-07-2020-0126.
- [11] Гольдман А. М. Правовые основания и формы применения специальных познаний в советском уголовном процессе. Вопросы экспертизы в работе защитника: сб. науч. тр. Ленинград: Ленингр. гос. ун-т, 1970. С. 27-44.
- [12] Kaban İ. Central audit activities as a continuous audit approach in the Turkish banking sector: a case study about Frauds in savings accounts. *Öneri dergisi*. 2020. Vol. 15. Issue 53. P. 254–275. doi: 10.14783/maruoneri.676406.
- [13] Калинин Ю. А. Участие в уголовном судопроизводстве лиц, обладающих специальными познаниями. *Вестник Московского государственного университета*. 1980. № 3. С. 56-61.
- [14] Камлик М. І. Судова бухгалтерія: підручник. Вид. 4-те, доповн. та переробл. Київ: Атіка, 2003. 592 с.
- [15] Хавронюк М. І. Корупційні схеми: їх кримінально-правова кваліфікація і досудове розслідування: посібник. Київ: Москаленко О. М., 2019. 464 с.
- [16] Кримінальний процесуальний кодекс України: Закон України від 13 квіт. 2012 р. № 4651-VI. URL: <https://zakon.rada.gov.ua/laws/show/4651-17>.
- [17] Лисиченко В. К., Циркаль В. В. Использование специальных знаний в следственной и судебной практике: пособие. Киев: Киев. гос. ун-т, 1987. 100 с.
- [18] Лук'янчиков Є. Д. Форми використання спеціальних знань за новим КПК України. Київ: КПП, 2014. С. 206-207.
- [19] Матвеев И. В. Проблемы квалификации злоупотребления должностными полномочиями. *Актуальные проблемы борьбы с преступностью: вопросы теории и практики: материалы XXII Междунар. науч.-практ. конф.* Красноярск: Сибир. юрид. ин-т, 2019. С. 241–243. doi: 10.51980/2019\_1\_241.
- [20] Мумінова-Савіна Г. Г. Судово-бухгалтерська експертиза: посібник. Київ: Київ. нац. ун-т, 2003. 202 с.
- [21] Про затвердження Порядку взаємодії між органами державної контрольно-ревізійної служби та органами прокуратури, органів внутрішніх справ і Служби безпеки України: наказ Головного контрольно-ревізійного управління, МВС, СБУ, Генеральної прокуратури України від 19 жовт. 2006 р. № 346/1025/685/53. URL: <https://zakon.rada.gov.ua/laws/show/z1166-06#Text>.

- [22] Про затвердження Положення про порядок проведення перевірки діяльності аварійно-рятувальних служб та їх готовності до реагування на надзвичайні ситуації: наказ Міністерства України з питань надзвичайних ситуацій та у справах захисту населення від наслідків чорнобильської катастрофи від 5 берез. 2002 р. № 61. URL: <http://zakon5.rada.gov.ua/laws/show/z0309-02>.
- [23] Неганов В. В. Використання висновків ревізій у кримінальному провадженні: автореф. дис. ... канд. юрид. наук: 12.00.09. Київ, 2018 20 с.
- [24] Неганов В. В. Використання висновків ревізій у кримінальному провадженні: дис. ... канд. юрид. наук: 12.00.09. Київ, 2018. 292 с.
- [25] Пасовец Е. Ю., Демченко Д. А. Хищение путем злоупотребления служебными полномочиями: к вопросу о снижении коррупционных рисков в ОПЧС. *Вестник Университета гражданской защиты МЧС Беларуси*. 2020. Т. 4. № 1. С. 106–114. doi: 10.33408/2519-237X.2020.4-1.106.
- [26] Криміналістика : підручник / В. В. Пясковський, Ю. М. Черноус, А. В. Самодін та ін.; за заг ред. В. В. Пясковського. 2-ге вид., переробл. і доповн. Київ: Право, 2020. 752 с.
- [27] Понікаров В. Д. Судово-економічна експертиза: навч. посіб. Харків: Інжен, 2005. 231 с.
- [28] Про затвердження Положення про Державну аудиторську службу України: постанова Кабінету Міністрів України від 3 лют. 2016 р. № 43. URL: <https://zakon.rada.gov.ua/laws/show/43-2016-%D0%BF#Text>.
- [29] Про затвердження Порядку проведення інспектування Державною фінансовою інспекцією, її територіальними органами: постанова Кабінету Міністрів України від 20 квіт. 2006 р. № 550. URL: <http://zakon4.rada.gov.ua/laws/show/550-2006-п>.
- [30] Романюк Б. В. Сучасні теоретичні та правові проблеми використання спеціальних знань у досудовому слідстві: дис. ... канд. юрид. наук: 12.00.09. Київ, 2002. 222 с.
- [31] Селина Е. Формы применения специальных познаний в уголовном процессе. *Законность*. 2002. № 5. С. 23–26.
- [32] Шапиро Л. Г. Процессуальные и криминалистические аспекты использования специальных знаний при расследовании преступлений в сфере экономической деятельности. Москва: Юрлитинформ, 2007. 320 с.
- [33] Щербаковський М. Г. Проведення та використання судових експертиз у кримінальному провадженні: монографія. Харків: В деле, 2015. 560 с.
- [34] Шрамко О. М. Проведение ревизий и проверок как виды использования специальных знаний при расследовании коррупционных преступлений в Украине. *KELM*. 2020. № 3–2. С. 133–138
- [35] Шрамко О. М. Використання спеціальних знань під час розслідування корупційних кримінальних правопорушень: дис. ... д-ра філософії: 081 «Право». Київ, 2021. 272 с.
- [36] Сорокотягин И. Н. Специальные познания в расследовании преступлений. Ростов на Дону: Ростов. ун-т, 1984. 119 с.
- [37] Справа № 127/3790/16 в архіві Вінницького міського суду Вінницької області.
- [38] Справа № 127/929/16-к в архіві Вінницького міського суду Вінницької області.
- [39] Справа № 127/9504/17 в архіві Вінницького міського суду Вінницької області.
- [40] Справа № 607/11911/19 в архіві Тернопільського апеляційного суду.
- [41] Воробьева С. В., Чикалина В. А. Особенности признаков составов преступлений и их значение для квалификации злоупотребления и превышения должностных полномочий. *Тенденции развития науки и образования*. 2020. Вып. 5. С. 22–25. doi: 10.18411/lj-05-2020-234.
- [42] Воронов С. С., Голубятников С. П. Использование экономической информации при выявлении и доказывании злоупотребления полномочиями. *Вестник Нижегородской академии МВД России*. 2020. Вып. 4. № 52. С. 59–63. doi: 10.36511/2078-5356-2020-4-59-63.
- [43] Вронская М. В., Дибяева С. Е. Применение феномена злоупотребления правом в практике Федеральной антимонопольной службы России при разрешении споров в сфере корпоративных закупок товаров, работ и услуг. *Административное и муниципальное право*. 2019. № 4. С. 15–26. doi: 10.7256/2454-0595.2019.4.30200.
- [44] Єдиний звіт Офісу Генерального прокурора про кримінальні правопорушення в Україні за січень–грудень 2020 р. URL: [https://www.gp.gov.ua/ua/stat\\_n\\_st?dir\\_id=114140&libid=100820&c=edit&c=fo](https://www.gp.gov.ua/ua/stat_n_st?dir_id=114140&libid=100820&c=edit&c=fo).
- [45] Про основні засади здійснення державного фінансового контролю в Україні: Закон України від 26 січ. 1993 р. URL: <https://zakon.rada.gov.ua/laws/show/2939-12#Text>.
- [46] Запотоцький А. Позапланова виїзна ревізія як спосіб використання спеціальних знань під час розслідування злочинів у сфері будівництва. *Підприємництво, господарство і право*. 2017. Вип. 5. С. 231-234.

## **Проведення ревізії як вид використання спеціальних знань під час розслідування привласнення, розтрата майна або заволодіння ним шляхом зловживання службовим становищем**

**Оксана Анатоліївна Семенюк**

Національна академія внутрішніх справ  
03035, Солом'янська площа, 1, м. Київ, Україна

■ **Анотація.** Метою статті є дослідження ревізії як виду використання спеціальних знань під час розслідування привласнення, розтрата майна або заволодіння ним шляхом зловживання службовим становищем; висвітлення підстав призначення, механізму проведення та оформлення результатів ревізії в кримінальному провадженні; визначення статусу ревізора, який проводить ревізію під час досудового розслідування. У статті використано комплекс наукових методів, а саме: термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Встановлено, що проведення ревізії є видом процесуальної форми використання спеціальних знань у кримінальному провадженні. Ревізор як посадова особа органу державного фінансового контролю, що в установленому законом порядку проводить ревізію, є спеціалістом у кримінальному процесуальному значенні. Спеціаліст-ревізор володіє спеціальними економічними, бухгалтерськими, товарознавчими знаннями, спеціальними знаннями в галузі фінансової та бюджетної звітності, знаннями та навичками в галузі криміналістичного документознавства. Ревізія під час розслідування привласнення, розтрата майна або заволодіння ним шляхом зловживання службовим становищем є способом збирання доказів, які в сукупності з іншими даними становлять предмет доказування в кримінальному провадженні. Проведення ревізій є ефективним засобом виявлення службових розкрадань, ознак їх приховування. Для проведення ревізії під час розслідування привласнення, розтрата майна або заволодіння ним шляхом зловживання службовим становищем, крім ревізора, доцільно додатково залучати інших спеціалістів

■ **Ключові слова:** ревізія; ревізор; спеціаліст; спеціальні знання; привласнення; розтрата майна; заволодіння майном; зловживання службовим становищем; службові розкрадання

UDC 614.8

DOI: 10.33270/01211203.48

## Current State and Prospects of Pre-Medical Training of Police Officers in Ukraine

Olena V. Chupryna\*, Olga O. Nesen

National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine

■ **Abstract.** The purpose of the study is to examine the current state of pre-medical training of police officers in Ukraine and outline the prospects for its development; summarise the relevant problems of proper training and preservation of long-term knowledge and practical skills, research the conditions for improving the level of skills aimed at saving a person in an emergency, in the system of professional service training of police officers; summarise proposals for improving pre-medical training of police officers within the framework of adapting state training programmes to international standards for providing pre-medical care. According to the set goal and specific features of the subject of the study, methods of system analysis, generalisation, comparative, functional, and other methods of scientific knowledge are used. The scientific originality of the study consists in a systematic analysis of current indicators of the implementation of conditions for the proper implementation of pre-medical training of police officers in Ukraine. The requirements for the introduction of uniform standards in basic professional training, postgraduate education, and training in higher education institutions with specific training conditions, and professional training in this area are systematised. The necessity to improve the mechanism and introduction of measures of the system of continuity of training in the pre-medical care of law enforcement officers is argued. The author's approach to the creation of basic educational and methodological support for pre-medical training of police officers and the need to comply with the requirements approved by state standards, according to the proper training of instructors who have the right to conduct such training, is proposed. Proposals are formulated to supplement the procedures for providing pre-medical care to persons in emergency conditions, approved by Order No. 398 of the Ministry of Health of Ukraine dated June 16, 2014. The existing system of pre-medical training of police officers needs to be improved due to the lack of coherence in the mechanism of continuous training in this area. For the comprehensive development of pre-medical care skills in police officers necessary for the performance of official duties, it is proposed to: 1) approve a unified programme of police training in Ukraine in accordance with the course "First at the scene", based on the provisions of international protocols; 2) introduce a system for monitoring the availability of certificates of successful completion of pre-medical training in police officers, the format of which is determined by the current legislation, and improve the mechanism for retraining police officers, subject to the expiration of these documents; 3) create training departments of pre-medical training centres for basic professional training of police officers in accordance with the requirements of current legislation and to ensure the involvement of specialists in conducting classes who have the appropriate certificate 4) provide training departments of pre-medical training of police officers with educational and methodological materials that fully correspond to the programme mentioned above; 5) supplement the procedures for providing pre-medical care to persons in emergency conditions (order of the Ministry of Health of Ukraine No. 398 of June 16, 2014) regarding the protocol for providing assistance in case of sudden (emergency) childbirth

■ **Keywords:** pre-medical training; victim; emergency condition; police; state standard; medical protocol; service training; training department

### ■ Suggested Citation:

Chupryna, O.V., & Nesen, O.O. (2021). Current state and prospects of pre-medical training of police officers in Ukraine. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 48-55. doi: 10.33270/01211203.48

■ \*Corresponding author

■ Received: 26.05.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

### ■ Introduction

The current stage of reforming the Ministry of Internal Affairs of Ukraine actualises the need to form a unified policy in the field of departmental education, optimise the system of existing educational institutions, ensure compliance with the principles of continuity of education and a proper combination of

theory and practice, create an effective professional personnel core [1].

According to the Law of Ukraine “On the National Police”, pre-medical training is an integral part of the professional abilities of a modern police officer. According to its provisions, each employee of the law enforcement agencies faces a number of tasks, in particular, regarding the provision of assistance services to persons who, for personal, economic, social reasons, or as a result of emergency situations, need it, which necessarily provides for the provision of pre-medical care [2].

In providing pre-medical care, the most important factor is the time factor. The more time passes from the moment of injury to the moment of medical care, the worse the prognosis for the victim becomes. Mortality increases exponentially. For example, in cases of transport injuries, if medical care was provided within 30 minutes – 1 hour, the mortality rate among the injured did not exceed 30%. If this period is extended, the mortality rate reaches 60-80%, and the increase occurs exponentially. That is, of the three people who died on the streets of the city, at least two could have been saved if they had received timely assistance [3].

In Ukraine, the emergency medical service operates, and the arrival of its personnel to the victim takes at least 5-10 minutes in an urban area and 15 minutes in rural areas [4]. During this time, every effort should be made to avoid further injuries, improve the condition of the victim, and sometimes even save their life. In this regard, mastering theoretical knowledge and acquiring practical skills in pre-medical care is extremely important for police officers, since most often they are the first to arrive at the scene of an accident.

According to the results of statistics from the World Health Organisation, assistance to the victim provided within the first 4 minutes increases their chances of rescue by 30% [5]. According to the same data, every fifth person killed at the scene could have been saved if timely and correctly provided with pre-medical care.

Practice shows that almost a third of victims of peacetime disasters need pre-medical care for vital signs. The ability to eliminate negative consequences for human health during emergencies of a natural, man-made, or social nature (natural disaster, major industrial accident, transport disaster, group violations of public order) is important in the training of police officers [6].

According to O. Myslova and O. Nykyforova, the reform of the Ministry of Internal Affairs system in accordance with NATO standards will ensure an optimal structure and training of specialists, which, with the minimum resources required for this, will guarantee

the effective implementation of the tasks set. In an unstable criminal situation, this means better control of the situation, increased flexibility in managing forces and means, rapid decision-making, and minimising losses in people and technical means [7].

Passing a single first aid course by emergency services is a global practice. In Europe and the United States, the basic course for rescue and police services is called First Responder. The main idea of this course is to teach rescuers of all emergency services to “speak the same language” [8].

The study shares the position of L. Shostak about the fact that the main principle of training in the pre-medical care of police officers is its standardisation in various educational institutions and departments [9].

The defining task of higher education institutions with specific training conditions is to train a new generation of professional personnel. This will help to provide the National Police with experienced employees who can effectively perform their tasks with the necessary level of training, skills, and professional and personal qualities. Conventional approaches to training law enforcement officers do not fully ensure the necessary efficiency and professional competence of qualified police personnel. Therefore, it would be correct to conclude that there is an objective contradiction between the ever-increasing requirements of modern society for police activities and the conservative theoretical system of police training [10].

Thus, during basic professional training, post-graduate education, training in institutions of higher education with specific training conditions, and official training of police officers, a single state regulatory framework should be used for the training of persons who do not have a medical education, but who, according to their official duties, must provide pre-medical care.

The papers of the following researchers are devoted to the investigation of issues related to the problems of pre-medical training of national police officers: O. Boiko, P. Volianskyi, A. Grynzovskyi, S. Guriev, M. Dovgyi, N. Drozdenko, T. Zhylin, V. Kuzmin, V. Kushnir, A. Makarenko, O. Myslova, O. Nykyforova, M. Striuk, V. Stebliuk, V. Tashmatov, L. Shostak, who examined the problems of legislative regulation of the activities of police officers in this area.

According to the authors, the main problem in modern conditions is that a holistically coordinated training programme for training police officers in pre-medical care in Ukraine has not yet been approved.

An important problem is the insufficient provision of educational and training departments of pre-medical training of law enforcement officers with basic educational and methodological materials: textbooks, educational, methodological and,

multimedia manuals, video lecture courses, training films on emergency simulation scenarios that fully correspond to the above programme.

The problem of imperfect development of the mechanism and implementation of measures of the system of continuity of education for pre-medical training of police officers remains unresolved. The term of professional development in this area requires full compliance with approved state standards.

It is necessary to consider certain omissions in the rules and algorithms for providing pre-medical care in the event of various pathological conditions, which are set out in the order of the Ministry of Health of Ukraine "On approval of procedures for providing pre-medical care to persons in emergency conditions" dated June 16, 2014, No. 398. The officially introduced training programme for law enforcement officers should be conducted in accordance with protocols approved at the state level, which necessarily contain algorithms for actions to provide pre-medical care both in everyday and crisis situations (extreme or emergency events).

During the performance of professional duties, police officers can often witness sudden childbirth, because the presence of a pregnant woman in life-threatening conditions or her independent presence in the time of emergency situations often leads to an unexpected birth of a child.

In recent years, the news has repeatedly reported on the successful implementation of pre-medical care by law enforcement officers in such cases [11]. Therefore, according to the authors, there is an urgent need to develop and approve by regulatory documents the procedure for providing pre-medical care in the event of an emergency (sudden) birth.

Existing disagreements negatively affect the development and improvement of knowledge and skills of police officers in pre-medical care.

This is confirmed, for example, by the data of monitoring visits conducted by the National Preventive Mechanism. Thus, in the special reports of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the state of implementation of the National Preventive Mechanism in the section "Violation of the right to health protection and medical care", it is constantly stated that the bodies and institutions do not comply with the requirements of Art. 3 of the Law of Ukraine "On Health Protection" regarding the organisation of pre-medical care [5].

It is concluded that a complex of problems that do not contribute to the proper training of police officers in pre-medical care remains unresolved. The main ones are considered below.

*The purpose of the study* is to examine the current state of pre-medical training of police officers

in Ukraine according to the norms of current legislation and outline the prospects for its development.

The following tasks are defined to achieve this goal:

1. summarise the current problems of proper training and preservation of long-term knowledge and practical skills aimed at saving a person in an emergency and research the conditions for improving the level of skills of police officers in this area in the system of professional service training;

2. provide proposals for improving the pre-medical training of police officers as part of the adaptation of state training programmes to international standards for the provision of pre-medical care.

The study analyses the current state of the system of pre-medical training of police officers in Ukraine, identifies gaps in the regulatory framework on this issue. The requirements for the introduction of uniform standards for basic professional training, postgraduate education, and training in higher education institutions with specific training conditions, and official training of police officers are generalised. The necessity of improving the mechanism and introducing measures of the system of continuity of education for pre-medical training is argued. The approach to the creation of basic educational and methodological support for pre-medical training of police officers and the need to comply with the requirements approved by state standards, within the framework of proper training of instructors who have the right to conduct such training, are outlined. Proposals are formulated to supplement the procedures for providing pre-medical care to persons in emergency conditions, approved by Order No. 398 of the Ministry of Health of Ukraine dated June 16, 2014.

## ■ Results and Discussion

According to the provisions of the Law of Ukraine "On emergency medical care", persons who are required to provide pre-medical care to a person in an emergency are, in particular, police officers who do not have a medical education, but according to their official duties must have practical skills in providing it [12].

In the current conditions, the training of law enforcement officers for pre-medical care should be conducted in accordance with Art. 18 of the Law of Ukraine "On the National Police", the concept of development of the emergency medical care system, approved by the order of the Cabinet of Ministers of Ukraine dated May 22, 2019, No. 383, the resolution of the Cabinet of Ministers of Ukraine dated November 21, 2012, No. 1115 "On approval of the procedure for training and advanced training of persons who are required to provide pre-medical care",

paragraph 8 of the regulations on the Ministry of Health of Ukraine, approved by the resolution of the Cabinet of Ministers of Ukraine dated March 25, 2015, No. 267 (as amended by the Cabinet of Ministers of Ukraine No. 90 of January 24, 2020), and according to the Order of the Ministry of Health of Ukraine No. 1627 of August 4, 2021 “On improving training for providing pre-medical care to persons who do not have a medical education”.

Training programmes and advanced training programmes in pre-medical care, according to the latest regulatory document, are developed based on the basic requirements of the international programmes “Fundamentals of life support”, “First at the scene”, “Professional life support” for the development of first aid skills of three levels for people who do not have a medical education.

The second level of the programme – “First at the scene” – provides for the preparation of persons who arrived at the scene, both individually and as part of groups, for the appearance of professional medical workers. The first person at the scene of an accident is a person who performs basic manipulations to save the victim’s life using a minimum set of equipment or in its complete absence (this category also includes police officers).

The course material “First at the scene” is based on the provisions of the international programmes BLS (basic life support) – basic resuscitation measures, PBLIS (paediatric basic life support) – basic resuscitation measures in children, Bcon (bleeding control) – providing pre-medical care in case of massive bleeding, ITLS (international trauma Life support)/PHTLS (prehospital trauma life support) – providing assistance to the injured at the pre-hospital stage. The course also provides for consideration of general concepts about the structure of the human body and the functioning of organs and systems, and training in the basic principles and skills necessary for assessing the condition of the victim and providing pre-medical care in extreme conditions before the arrival of the emergency medical team [13].

According to the provisions of this order, upon completion of the course and successful completion of the theoretical and practical parts of the exam, the participant receives a certificate, which is valid for two years.

After completing the training, each law enforcement officer must have a perfect knowledge of the following issues:

- rules for examining the scene of an accident and observing their own safety during the provision of pre-medical care;
- methods for assessing signs of life in victims with sudden circulatory arrest;

- rules for calling emergency medical care and communicating with the ambulance dispatcher;
- algorithms for cardiopulmonary resuscitation in adults;
- algorithms for performing cardiopulmonary resuscitation using an automatic external defibrillator;
- rules for determining the presence of upper respiratory tract obstruction;
- algorithms for restoring airway patency in victims.

This order approved the requirements for the training of the state institution “Ukrainian scientific and practical centre for emergency care and Disaster Medicine of the Ministry of Health of Ukraine” instructors who have the right to conduct training on pre-medical care of rescuers of the second level – police officers. According to the approved requirements, persons with higher education with a junior bachelor’s degree in any specialities of the field of knowledge “Healthcare”, having practical experience in the fields of healthcare, civil security, social protection (at least 2 years), and having previously successfully completed training under the third-level programme or the programme for medical workers of the emergency medical care system are allowed to study under the programme “Pre-hospital care instructor”.

Unfortunately, not all institutions of higher education with specific training conditions and during the official training of employees of the National Police of Ukraine comply with these legislative norms. In some units, police training is conducted in accordance with uncoordinated protocols, for example, tactical medicine, the purpose of which is a set of actions and manipulations to provide pre-medical care to victims in combat conditions (Tactical Combat Casualty Care) (TCCC), or tactical emergency medical care (TEMC). A detailed analysis of these protocols is described in previous publications [14].

An important factor in maintaining the level of sufficient knowledge and skills in pre-medical training of police officers is the control of retraining in this area. There is no single well-established system for completing pre-medical care courses (every three years) and monitoring the availability of certificates for police officers.

It is necessary to overcome the non-compliance of instructors with the established requirements of legislative acts (such “training” is now conducted by many inexperienced people and even scammers) to achieve the proper level of training in pre-medical care.

Notably, the discipline “Pre-medical training” for all categories of students of the National Academy of Internal Affairs has been taught as part of the course “First at the scene” since 2016. Academic and working programmes of the discipline for bachelors, students of postgraduate education and

in the system of basic professional training fully correspond to the content, plan, and requirements for acquiring knowledge and skills in this course [13].

This type of training is designed to develop the skills of providing emergency pre-medical care to the victim at the scene by knowing the rules for stopping bleeding, working with dressings, restoring respiratory function, and performing resuscitation measures. Practical classes are conducted according to scenarios (situational tasks), which contain several possible scenarios depending on the activity of the participant or their team [8].

Pre-medical training classes are conducted by teachers with higher medical education, with the mandatory involvement of instructors of the Pre-Medical Training Department of the Kyiv Centre for Basic Professional Training "Police Academy" of the National Academy of Internal Affairs. Each of them has been trained in the "Pre-hospital care instructor" programme and has a corresponding certificate. The necessary equipment and materials for conducting pre-medical training are provided to develop students' practical skills, according to the requirements of the order of the Ministry of Health of Ukraine No. 1627 of August 4, 2021.

After completing their studying, according to the programme of the academic discipline "Pre-medical training", students of the National Academy of Internal Affairs acquire the following skills:

- determination of breathing in a victim with suspected sudden circulatory arrest;
- restoration of airway patency by the manual method;
- restoration of airway patency by extending the lower jaw;
- performing chest presses during cardiopulmonary resuscitation in adults;
- performing artificial lung ventilation in adults;
- restoration of patency of the upper respiratory tract in case of obstruction in adults;
- use of an external automatic defibrillator during cardiopulmonary resuscitation;
- providing the victim with a stable position;
- determination and evaluation of respiration in children with suspected sudden circulatory arrest;
- restoration of airway patency by manual method in children of different age groups;
- restoration of airway patency by extending the lower jaw;
- performing chest presses during cardiopulmonary resuscitation in children of different age groups;
- performing artificial lung ventilation in children of different age groups;
- restoration of patency of the upper respiratory tract in case of obstruction in children of different age groups;

- providing children of different age groups with a stable position;
- determination of signs of heavy external bleeding;
- identification of signs of internal bleeding;
- stopping bleeding with a pressure bandage;
- stopping bleeding with rubber and haemostatic tourniquet of the CAT type;
- application of a bandage to the limbs;
- application of a neck collar in case of injuries to the cervical spine;
- immobilisation of the victim on a long transportation board;
- evacuation of the victim from the vehicle.

Each student is issued a certificate of successful completion of pre-medical training in the course "first at the scene of an accident", the format of which is determined by law.

Over the past five years, the authors team of the National Academy of Internal Affairs has published a number of textbooks, teaching aids and memos, lecture courses, multimedia manuals, and distance courses, which were awarded honorary awards by the Ministry of Education and the Ministry of Internal Affairs of Ukraine.

In addition to all the rules and procedures for providing pre-medical care approved by the relevant order of the Ministry of Health of Ukraine, the authors proposed to use an algorithm of assistance during emergency (sudden) childbirth in the designated educational and methodological base, which can be applied to create a proper order in the new version of the Order [15].

## ■ Conclusions

In the current conditions, the level of knowledge and skills of police officers in pre-medical care does not meet the current state and international standards, certifying gaps in legislation and inadequate level of activities in this area. The main reason for this situation is the lack of coherence in the education system mechanism for the pre-medical training of police officers, which requires urgent improvement. The study believes that mastering the skills of pre-medical care necessary for the performance of their official duties by police officers requires applying the same regulatory standards for their training in different educational institutions and training departments. The following is proposed to resolve this issue:

Approve a single police training programme in Ukraine within the course "First at the scene", which is based on the provisions of the international programmes BLS (basic life support) – basic resuscitation measures, PBLS (paediatric basic life support) – basic resuscitation measures in children, Bcon (bleeding control) – providing pre-medical

care in case of massive bleeding, ITLS (international trauma Life support)/PHTLS (prehospital trauma life support) – providing assistance to the injured at the prehospital stage;

- introduce a system for monitoring police officers regarding the availability of certificates of successful completion of pre-medical training, the format of which is determined by the current legislation, and improve the mechanism for conducting retraining of police officers in case of the expiration of these documents;

- create training departments of pre-medical training centres for basic professional training of police officers in accordance with the requirements of current legislation and provide them with professional specialists who have been trained under the “Pre-hospital care Instructor” programme and have the appropriate certificate;

- provide training departments of pre-medical training of police officers with educational and methodological materials: textbooks, educational,

methodological, and multimedia manuals, video lectures courses, and training films based on emergency simulation scenarios that fully correspond to this programme;

- implement measures to make additions to the procedures for providing pre-medical care to persons in emergency conditions by Order No. 398 of the Ministry of Health of Ukraine dated June 16, 2014, regarding protocols for providing assistance in case of sudden (emergency) childbirth.

According to the authors, to avoid disagreements in the system of training for the pre-medical care of police officers, the latter should be based on the regulatory framework approved by joint orders of the Ministry of Health and the Ministry of Internal Affairs of Ukraine.

A well-defined procedure for cooperation, and joint and well-coordinated work of police officers and employees of other rescue services will substantially strengthen the effectiveness of providing pre-medical care to victims.

## ■ References

- [1] Atkins, D.L., Caen, A.R., Berger, S., Samson, R.A., Schexnayder, S.M., Joyner Jr, B.L., Bigham, B.L., Niles, D.E., Duff, J.P., Hunt, E.A., & Meaney, P.A. (2018). An update to the American heart association guidelines for cardiopulmonary resuscitation and emergency cardiovascular care. *Circulation*, 137(1), 1-6. doi: 10.1161/CIR.0000000000000540.
- [2] Chupryna, O.V., & Zhylin, T.P. (2017). Actual problems of providing medical assistance to National Police officers. *Scientific Bulletin of the National Academy of Internal Affairs*, 105(4), 173-185.
- [3] Gaievskiy, S., & Meghoo, C. (2019). Availability of essential medical equipment for prehospital trauma care on public Ambulances in Ukraine. *Prehospital and Disaster Medicine*, 34(1), 104-107. doi: 10.1017/s1049023x19002164.
- [4] Hurskyi, V.Ye. (2019). Professional psychological training of future police officers in higher education institutions of Ukraine with specific training conditions. *Legal Journal of Donbass*, 3(68), 167-172. doi: 10.32366/2523-4269-2019-68-3-167-173.
- [5] Myslyva, O.O., Nykyforova, O.A., & Boiko, O.V. (2020). Methodology of conducting tactical medicine classes for police officers in Ukraine, taking into account modern NATO requirements. *Legal Bulletin*, 2, 207-212. doi: 10.32837/yuv.v0i2.1724.
- [6] Order of the Ministry of Health of Ukraine “On improving the preparation for provision of medical assistance to people without medical education”. No. 1627. (2021, August). Retrieved from <https://moz.gov.ua/en/article/ministry-mandates/nakaz-mozukraini-vid-04082021--1627-produskonalennja-pidgotovki-z-nadannja-domedichnoi-dopomogi-osib-jaki-nemajut-medichnoi-osviti>.
- [7] Order of the Ministry of Health of Ukraine “On approval of the procedures for the provision of medical assistance to persons in urgent situations”. No. 398. (2014, June). Retrieved from <http://zakon2.rada.gov.ua/laws/find/1429172?stan=5>.
- [8] Shostak, L.Y. (2019). Principles of training of the National Police in home care. *Medical Education*, 2, 42-46. doi: 10.11603/me.2414-5998.2019.2.10342.
- [9] Sokurenko, V.V. (2018). Perspective directions of optimization of the process of selection of candidates for higher education institutions with specific training conditions that train police officers. In *Training of Police Officers in the Conditions of Reforming the System of The Ministry of Internal Affairs of Ukraine: Proceedings of the Conference* (pp. 44-47). Kharkiv: KhNUVS.
- [10] Suseel, A., Panchu, P., Abraham, S.V., Varghese, S., George, T., & Joy, L.A. (2019). An analysis of the efficacy of different teaching modalities in imparting adult cardiopulmonary resuscitation skills among first-year medical students: A pilot study. *Indian Journal of Crit Care Med*, 23(11), 509-512. doi: 10.5005/jp-journals-10071-23284.

- [11] Open letter to the Head of the National Police from the NGO “Expert Center for Human Rights”. No. 186/06/21. (2021, June). Retrieved from <https://www.dialohbezpeky.org/wpcontent/uploads/2021/07/Lyst-na-NPU.pdf> [in Ukrainian].
- [12] Volianskyi, P.B., Dolhyi, M.L., Drozdenko, N.V., Kushnir, V.A., Makarenko, A.M., & Striuk, M.P. (2019). Pre-medical training in educational institutions. An absolute necessity. *Scientific Collection of the Institute of Public Administration in the Field of Civil Protection*, 7, 31-41. doi: 10.35577/iducz.2019.07.03.
- [13] Law of Ukraine “About emergency medical care”. No. 5081-VI. (2012, July). Retrieved from <http://zakon3.rada.gov.ua/laws/show/5081-17>.
- [14] Law of Ukraine “On National Police”. No. 580-VIII. (2015, July). Retrieved from <http://zakon3.rada.gov.ua/laws/show/580-19>
- [15] A woman gave birth just at the Kyiv metro crossing. Site “BBC news Ukraine”. Retrieved from <https://www.bbc.com/ukrainian/news-57099216>.

### ■ Список використаних джерел

- [1] Atkins D. L., Caen A. R., Berger S., Samson R. A., Schexnayder S. M., Joyner Jr B. L., Bigham B. L., Niles D. E., Duff J. P., Hunt E. A., Meaney P. A. An update to the American heart association guidelines for cardiopulmonary resuscitation and emergency cardiovascular care. *Circulation*. 2018. Vol. 137. No. 1. P. 1–6. doi: 10.1161/CIR.0000000000000540.
- [2] Чуприна О. В., Жилін Т. П. Актуальні проблеми викладання домедичної допомоги працівникам Національної поліції України. *Науковий вісник Національної академії внутрішніх справ*. 2017. Вип. 4. № 105. С. 173–185.
- [3] Gaievskiy S., Meghoo C. Availability of essential medical equipment for prehospital trauma care on public ambulances in Ukraine. *Prehospital and disaster medicine*. 2019. Vol. 34. No. 1. P. 104. doi: 10.1017/s1049023x19002164.
- [4] Гурський В. Є. Професійна психологічна підготовка майбутніх поліцейських у закладах вищої освіти України зі специфічними умовами навчання. *Правовий часопис Донбасу*. 2019. Вип. 3. № 68. С. 167–172. doi: 10.32366/2523-4269-2019-68-3-167-173.
- [5] Мислива О. О., Никифорова О. А., Бойко О. В. Методологія проведення занять із тактичної медицини для поліцейських в Україні з урахуванням сучасних вимог НАТО. *Юридичний вісник*. 2020. № 2. С. 207–212. doi: 10.32837/yuv.v0i2.1724.
- [6] Про удосконалення підготовки з надання домедичної допомоги осіб, які не мають медичної освіти: наказ Міністерства охорони здоров'я України від 4 серп. 2021 р. № 1627. URL: <https://moz.gov.ua/en/article/ministry-mandates/nakaz-moz-ukraini-vid-04082021--1627-pro-udoskonalennja-pidgotovki-z-nadannjadomedichnoi-dopomogi-osib-jaki-ne-majut-medichnoi-osviti>.
- [7] Про затвердження порядків надання домедичної допомоги особам при невідкладних станах: наказ Міністерства охорони здоров'я України від 16 черв. 2014 р. № 398. URL: <https://zakon.rada.gov.ua/laws/show/z0750-14#Text>.
- [8] Шостак Л. Й. Принципи підготовки співробітників Національної поліції з домедичної допомоги. *Медична освіта*. 2019. № 2. С. 42–46. doi: 10.11603/me.2414-5998.2019.2.10342.
- [9] Сокурєнко В. В. Перспективні напрями оптимізації процесу відбору кандидатів на навчання до закладів вищої освіти із специфічними умовами навчання, що готують поліцейських. Підготовка поліцейських в умовах реформування системи МВС України: матеріали конф. (Харків, 24 трав. 2018 р.). Харків: ХНУВС, 2018. С. 44–47. URL: <http://dspace.univd.edu.ua/xmlui/handle/123456789/3489>.
- [10] Suseel A., Panchu P., Abraham S. V., Varghese S., George T., Joy L. An analysis of the efficacy of different teaching Modalities in imparting adult cardiopulmonary resuscitation skills among first-year medical students: pilot study. *Indian journal of crit care med*. 2019. Vol. 23. No. 11. P. 509–512. doi: 10.5005/jp-journals-10071-23284.
- [11] Відкритий лист Голові Національної поліції від ГО «Експертний центр з прав людини» від 15 черв. 2021 р. № 186/06/21. URL: <https://www.dialohbezpeky.org/wp-content/uploads/2021/07/Lyst-na-NPU.pdf>.
- [12] Волянський П. Б., Долгий М. Л., Дрозденко Н. В., Кушнір В. А., Макаренко А. М., Стрюк М. П. Домедична підготовка в освітніх закладах. Безумовна необхідність. *Науковий збірник Інституту державного управління у сфері цивільного захисту*. 2019. № 7. С. 31–41. doi: 10.35577/iducz.2019.07.03.

- [13] Про екстрену медичну допомогу: Закон України від 5 лип. 2012 р. № 5081-VI. URL: <https://zakon.rada.gov.ua/laws/show/5081-17.#Text>.
- [14] Про Національну поліцію: Закон України від 2 лип. 2015 р. № 580-VIII. URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text>.
- [15] Жінка народила просто у переході київського метро. BBC news Україна. 2020. URL: <https://www.bbc.com/ukrainian/news-57099216>.

## Сучасний стан і перспективи домедичної підготовки поліцейських в Україні

Олена Віталіївна Чуприна, Ольга Олександрівна Несен

Національна академія внутрішніх справ  
03035, Солом'янська площа, 1, м. Київ, Україна

■ **Анотація.** Мета статті – дослідити сучасний стан домедичної підготовки поліцейських в Україні й окреслити перспективи її розвитку; узагальнити актуальні проблеми належного навчання та збереження довготривалих знань і практичних навичок, здійснити наукове дослідження умов підвищення рівня вмінь, спрямованих на порятунок людини в невідкладному стані, у системі професійної службової підготовки поліцейських; узагальнити пропозиції з удосконалення домедичної підготовки працівників поліції в межах адаптації державних навчально-тренувальних програм до міжнародних стандартів з надання домедичної допомоги. Відповідно до поставленої мети та специфіки предмета дослідження використано методи системного аналізу, узагальнення, порівняльний, функціональний та інші методи наукового пізнання. Наукова новизна публікації полягає в системному аналізі сьогочасних показників реалізації умов до належного здійснення домедичної підготовки поліцейських в Україні. Систематизовано вимоги щодо запровадження єдиних стандартів під час первинної професійної підготовки, післядипломної освіти, підготовки в закладах вищої освіти із специфічними умовами навчання та службової підготовки за цим напрямом. Аргументовано необхідність удосконалити механізм і запровадження заходів системи безперервності підготовки з домедичної допомоги правоохоронців. Запропоновано авторський підхід до створення базового навчально-методичного забезпечення занять з домедичної підготовки поліцейських і необхідності дотримання вимог, затверджених державними стандартами, відповідно до належної підготовки інструкторів, які мають право здійснювати таке навчання. Сформульовано пропозиції стосовно доповнення Порядків надання домедичної допомоги особам при невідкладних станах, затверджених наказом Міністерства охорони здоров'я України від 16 червня 2014 року № 398. Наявна система домедичної підготовки поліцейських потребує вдосконалення у зв'язку з недостатньою злагодженістю механізму безперервного їх навчання за цим напрямом. Для всебічного формування в поліцейських необхідних для виконання службових обов'язків навичок з домедичної допомоги запропоновано: 1) затвердити єдину програму підготовки поліцейських в Україні відповідно до курсу «Перший на місці події», що ґрунтується на положеннях міжнародних протоколів; 2) запровадити систему моніторингу наявності посвідчень про успішне проходження домедичної підготовки в працівників поліції, формат якого визначений чинним законодавством, і вдосконалити механізм проведення перепідготовки поліцейських, за умов закінчення терміну дії цих документів; 3) створити навчально-тренувальні відділення домедичної підготовки центрів первинної професійної підготовки поліцейських згідно з вимогами чинного законодавства й забезпечити залучення до проведення занять фахівців, які мають відповідний сертифікат; 4) забезпечити навчально-тренувальні відділення домедичної підготовки працівників поліції навчально-методичними матеріалами, які цілком відповідають зазначеній вище програмі; 5) доповнити Порядки надання домедичної допомоги особам при невідкладних станах (наказ Міністерства охорони здоров'я України від 16 червня 2014 року № 398) щодо протоколу з надання допомоги в разі раптових (екстрених) пологів

■ **Ключові слова:** домедична підготовка; постраждалих; невідкладний стан; поліцейський; державний стандарт; медичний протокол; службова підготовка; навчально-тренувальне відділення

UDC 343.98

DOI: 10.33270/01211203.56

## Use of Special Knowledge in the Investigation of Intentional Destruction or Damage to the Property of a Law Enforcement Officer

Alla P. Chyzh\*

Kharkiv National University of Internal Affairs  
61000, 27 Lev Landau Ave., Kharkiv, Ukraine

■ **Abstract.** The purpose of the study is to determine the typical forms of special knowledge that investigators use in the investigation of intentional destruction or damage to the property of a law enforcement officer, their capabilities, and certain problematic issues that arise in the process of their implementation. Special research methods were applied to achieve this goal: system analysis, comparative-legal, system-structural, and general scientific methods, in particular, dialectical and analogy methods. The scientific originality of the study lies in the fact that based on the analysis of the investigative and judicial practice of investigating intentional destruction or damage to the property of a law enforcement officer, for the first time, those forms of special knowledge that investigators mainly use to solve certain tactical tasks are determined. It also outlines the possibilities and mistakes that investigators make when appointing certain forensic examinations, namely: commodity research, in particular, automotive, tracological, fire-technical, examination of materials, substances, and products. The substantial importance of specialists in conducting inspections of places of events and objects, that is, those investigative (search) actions that are most common for criminal proceedings of the category under study, is proved. The scientific position that experts and specialists are carriers of special knowledge, the use of which is the main guarantee of ensuring an effective investigation of intentional destruction or damage to the property of a law enforcement officer is substantiated. Typical kinds of forensic examinations, including complex ones, are defined, which are appointed by investigators during the investigation of crimes of this type. It is emphasised that the main factor that is crucial in the rapid and complete resolution of the issues raised by the investigator for the decision of the forensic expert is the provision of complete initial data both on the event that occurred and, on the objects, sent for examination. It is proved that specialists in criminal proceedings initiated in connection with the commission of intentional destruction or damage to the property of a law enforcement officer are most often involved in inspections of places of events and objects, searches, investigative experiments

■ **Keywords:** struction or damage to property; law enforcement officer; special knowledge; expert; specialist; forensic examination

### ■ Introduction

Investigation of intentional destruction or damage to the property of a law enforcement officer (Art. 347 of the Criminal Code of Ukraine) is a complex process that requires an investigator to perform complex tactical tasks. Their substantial volume involves the use of special knowledge, the carriers of which are specialists and experts. The latter are endowed with

different legal statuses in criminal proceedings and have different levels of professional competence. These factors should be considered by investigators when investigating a criminal offence because they can affect the implementation of the principles of criminal proceedings in a certain way.

Aspects of the use of special knowledge in the investigation of intentional destruction or damage to property were analysed by M. Buzynarskyi [1] and B. Slobodianiuk [2]. A thorough comprehensive study of this problem in the context of a criminal offence under Art. 194 of the Criminal Code of Ukraine was conducted by A. Bodnar [3]. Some features of the use of special knowledge in the investigation of encroachments on the property of employees of

### ■ Suggested Citation:

Chyzh, A.P. (2021). Use of special knowledge in the investigation of intentional destruction or damage to the property of a law enforcement officer. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 87-98. doi: 10.33270/01211203.56

■ \*Corresponding author

■ Received: 25.05.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

law enforcement agencies, members of public establishments for the protection of public order and their close relatives were investigated by V. Husieva. The author analysed the specific features of the involvement of specialists during the inspection of the place of commission of criminal offences under Art. 347, 352 of the Criminal Code of Ukraine, and problematic issues of the appointment and conduct of some forensic examinations and certain non-procedural forms of special knowledge use [4].

Ukrainian researchers have not investigated the problems of using special knowledge in the investigation of intentional destruction or damage to the property of a law enforcement officer in a comprehensive manner. This negatively affects law enforcement practice, because investigators do not have scientifically based recommendations to ensure a quick and complete investigation of criminal proceedings of the category under study.

The need to examine this issue is also due to the need to introduce international experience, in particular, advanced methods of conducting forensic examinations, and modern technical and forensic tools in the process of investigating criminal offences. For example, given the fact that a large number of criminal offences under Art. 347 of the Criminal Code of Ukraine are committed by arson, they require analysis and determination of the possibility of introducing various technical and forensic tools into Ukrainian practice, which allow solving certain tactical tasks that are subject to clarification during the investigation of crimes of the types under study. These include, for example, infrared photography as an effective tool for detecting bloodstains at arson sites [5], optimised analytical methods for analysing petrochemical products that allow criminologists to determine not only the type of combustible liquid that was used during a fire (even after an event) but also determining the specific type of fuel used [6], thermogravimetric analysis methods [7], which are actively investigated by foreign researchers, etc.

*The purpose of the study* is to determine the typical forms of special knowledge that investigators use in the investigation of intentional destruction or damage to the property of an employee of a law enforcement agency, their capabilities, and certain problematic issues that arise during their implementation.

It was necessary to complete the following tasks to achieve this goal:

1. analyse the investigative and judicial practice of investigating intentional destruction or damage to the property of a law enforcement officer to determine the standard forms of special knowledge used by investigators;

2. based on the analysis of the studies of Ukrainian and foreign researchers, outline the possibilities

of standard forms of special knowledge that investigators use in the investigation of crimes of the category under study;

3. considering theoretical findings and empirical data, it is necessary to characterise the problematic issues that exist in investigative practice during the implementation of certain typical forms of using special knowledge in crimes of this category.

The scientific originality of the study lies in the fact that based on the analysis of the investigative and judicial practice of investigating intentional destruction or damage to the property of a law enforcement officer, for the first time identified those forms of using special knowledge that investigators most often use to solve certain tactical tasks. The possibilities and mistakes made by investigators during the appointment of certain forensic examinations are also outlined, including: commodity research, in particular, automotive, tracological, fire-technical, examination of materials, substances, and products. The substantial importance of specialists in conducting inspections of places of events and inspections of objects, that is, those investigative (search) actions that are most common for criminal proceedings of the category under study, is proved.

## ■ Results and Discussion

The concept of “special knowledge” does not contain its own regulatory consolidation in the current legislation of Ukraine. It is fragmentary present in the Criminal Procedure Code of Ukraine and the Law of Ukraine “On forensic expertise”. As O. Motliakh aptly states, the content of this issue is more substantiated by the scientific findings of procedural researchers and criminologists of both the Soviet era and modern Ukrainian ones [8].

Thus, for example: B. Lukianchykov, Ye. Lukiianchykov, and S. Petriaiev emphasise that special knowledge should be considered a system of information of a certain branch of science or type of activity (craft), which is used by investigators, prosecutors, courts, or a person involved for this purpose to solve specific tasks of criminal proceedings [9]. In general, the study supports the definition provided by researchers, but some do not refer the prosecution to the subjects of using special knowledge, because for them, knowledge of the field of law, is professional. This position is also supported by the study since the use of special knowledge should be conducted at a high professional level by competent persons.

Without resorting to a scientific discussion on the interpretation of the concept of “special knowledge”, it is proposed, considering the analysis of investigative and judicial practice, to determine the most common forms of special knowledge that investigators use in the investigation of intentional

destruction or damage to the property of a law enforcement officer.

In accordance with the criminal procedure legislation, it is planned to involve such subjects as an expert and a specialist in criminal proceedings as carriers of special knowledge. According to Art. 69 of the Criminal Procedure Code of Ukraine, an expert in criminal proceedings is a person who has mastered scientific, technical, or other special knowledge, and has the right, in accordance with the Law of Ukraine "On forensic expertise", to conduct an expert examination, who is instructed to organise an examination of objects, phenomena, and processes containing information about the circumstances of committing a criminal offence, and give an opinion on issues that arise during criminal proceedings and relate to the field of their knowledge [10]. Therewith, the Law of Ukraine "On forensic expertise" provides that forensic experts can be persons who have the necessary knowledge to provide an opinion on the issues under investigation. Forensic experts of state specialised institutions can be specialists who have appropriate higher education, an educational qualification level not lower than a specialist, and have received appropriate training and the qualification of a forensic expert in a particular speciality [11].

An expert in criminal proceedings conducts a qualified study, based on the results of which they draw conclusions that the current criminal procedure legislation defines as a procedural source of evidence. Considering the above, forensic examination is the most qualified form of using special knowledge. This study supports the position of G. Avdieieva, who claims that forensic examination is an important element of scientific-technical provision of investigative activities. Due to the involvement of an expert, the investigator has the opportunity to increase the effectiveness of the criminal investigation and reduce its time frame. The expert opinion contains such evidentiary information that is often impossible for an investigator to obtain without using special knowledge [12]. The involvement of an expert is conducted on behalf of the party to criminal proceedings if special knowledge is needed to clarify the circumstances relevant to criminal proceedings [10]. Based on the results of the analysis of the investigative and judicial practice of investigating intentional destruction or damage to the property of a law enforcement officer, it is concluded that most often investigators appoint the following types of forensic examinations: commodity (42%), automotive (85%), tracological (22%), materials, substances, and products (21%), fire-technical (12%), photographic and portrait (9%), forensic psychiatric

(8%), video or audio recordings (7%), explosive-technical (5%), molecular-genetic (3%), etc.

Commodity expertise is one of the most common forensic examinations in criminal proceedings of the category under study because the object of its research is the subject of encroachment. According to A.V. Bodnar, this examination is a way of collecting evidence of exactly those factual data that are important for the correct establishment of objective and subjective signs of a criminal offence – that is, those non-obvious facts that can be established by commodity specialists through a special examination of the relevant objects [3].

O.V. Shevchenko rightly calls commodity expertise a procedural action, the essence of which is the conduct by forensic commodity experts, based on the tasks of the parties to criminal proceedings and the court, a scientifically founded examination of goods, works, and services to establish their commodity properties and other consumer information when solving the problems of criminal proceedings using systems and methods, which is issued as an expert opinion [13].

The objects of commodity expertise are: a) products of commercial origin (industrial and food groups); b) raw materials, semi-finished products, auxiliary materials; c) containers, packaging means of commercial use in the form of samples, both new and used; d) documents describing the origin, type, article, grade, completeness, and other indicators of goods; e) other material evidence, materials of criminal proceedings [3]. Notably, the subject of commodity expertise is mainly products of commercial origin that are in a state of complete unsuitability or temporary unsuitability, which makes it impossible to use them for their intended purpose.

The appointment of a forensic commodity expert examination takes place in several stages, namely: a) determining the need for a forensic commodity expert examination; b) choosing an expert; c) drawing up a resolution on conducting a forensic commodity expert examination; d) formulating issues that should be resolved by experts; e) familiarising the suspect with this resolution; f) explaining their rights to them [3]. This study believes that during the investigation of intentional destruction or damage to property, in particular, of an employee of a law enforcement agency, a forensic commodity examination should be assigned in each proceeding. Our position is also justified by the legislative provisions, because according to paragraph 6 of part 2 of Art. 242 of the Criminal Procedure Code of Ukraine, an investigator or prosecutor is required to appoint an expert examination to determine the amount of material damage, if the victim cannot determine them and has not provided a document

confirming the amount of such damage, the amount of non-property damage, environmental damage caused by a criminal offence [10]. Taking this into account, it is believed that the allocation of a stage to determine the need for a forensic commodity examination is inappropriate during the investigation of criminal offences related to the intentional destruction or damage to the property of a law enforcement officer.

Before the implementation of further stages of the appointment of a forensic commodity examination, in particular, regarding the preparation of a decision on its conduct and the formulation of issues that should be resolved by experts, the investigator is obliged to take a number of procedural measures designed to ensure the effective conduct of such studies. These include, in particular, measures aimed at collecting all the necessary initial data on the object of research and the circumstances of the incident.

This need is due to the fact that the value of objects (things) that were in use must be determined in accordance with their market value at the time of committing the crime. The expert must calculate the percentage of wear and tear of the item due to its previous use, which also affects the value of the property. In addition, the investigator is obliged to establish what damage the object of research had before the crime occurred, whether it was in a usable state, what damage was caused as a result of the crime, etc. The investigator must establish all this information and formalise it in a procedural way, and send the received materials for research by a forensic expert. In addition, the investigator must determine whether they will send material evidence directly for the expert's research or limit themselves to providing materials for criminal proceedings. This study believes that the solution to these issues depends on the investigative situation that has developed at a certain stage of the investigation. Therewith, to solve them most optimally, the investigator can seek advice from a specialist – a commodity expert. The latter will also help to correctly formulate the question that the expert should solve.

However, during the investigation of the category of criminal proceedings under study, the commodity expert is assigned the task of determining not only the value of the damaged property but also destroyed. As an example, criminal proceedings No. 12018170190000353, which were considered by the Leninsky District Court of Poltava can be cited. According to the circumstances of the case, the accused decided to take revenge on the district police inspector of the Kobeliatskyi Main Department of the National Police in the Poltava region due to the fact that the latter repeatedly drew up re-

ports on them committing administrative offences. The accused arrived at the territory of the victim's household and set fire to 95 hay bales with a lighter to realise their criminal intent. As a result of the deliberate destruction of property belonging to a law enforcement officer, committed by arson, the victim suffered damage in the amount of 4750 UAH [14]. This study believes that in such cases, the investigator should conduct actions aimed both at establishing individual signs of destroyed property and confirming its presence.

Before appointing a forensic commodity examination, the investigator should consider the fact that in some cases it is advisable for a forensic expert not only to get acquainted with the materials of criminal proceedings but also to directly examine the destroyed or damaged property, especially when the encroachment is committed against real estate. Thus, for example, in criminal proceedings No. 12018200060000317, which was considered by the Akhtyrskyi City District Court of Sumy region, the accused, having brought an offensive fragmentation hand grenade of remote action RGD-5 into combat mode, to use the damaging factors of its explosion to damage the victim's property, used the specified combat supply, throwing it into the courtyard of the household in the direction of the Chevrolet Niva 2123 car. As a result of the impact of the damaging factors of the explosion, which occurred as a result of the use by the accused of an offensive fragmentation hand grenade of remote action RGD-5, damage to the property belonging to the victim, namely: a Chevrolet Niva 2123 car, the facade, windows, and roof of a residential building, which caused material damage to the victim. This study believes that under such conditions and in such investigative situations, it is appropriate for an expert to directly examine the damaged property. If it is impossible to conduct an inspection, it is advisable not to limit yourself to examining the scene of an accident, but also to interrogate the owner and users of the property about its previous condition [15]. Thus, the investigator is also required to inform the victim and other interested parties about the impossibility of performing actions aimed at changing the state of material evidence (in this case, the subject of encroachment).

Another type of common forensic examinations that are prescribed during the investigation of a criminal offence under Art. 347 of the Criminal Code of Ukraine is auto-commodity expertise. Auto-commodity expertise systematically examines vehicles (their components) as a commodity, methods of cognition of their use value, cost values of technological aspects of their restoration repair, and requirements for the quality of repair [16].

One of the stages of automotive expertise is a technical inspection of a wheeled vehicle. It allows for identifying a wheeled vehicle; determining its technical condition; completeness; nature and volume of damage caused to the vehicle; mileage and other indicators necessary for the investigation. The current legislation of Ukraine provides for the possibility of conducting automotive research and drawing up an opinion without personal inspection of a wheeled vehicle by an expert. This is possible only by the decision of the body (or person) that appointed the expert examination (involved the expert), provided that all the necessary data necessary for conducting the study is provided [16]. This study believes that under such conditions, to ensure the non-alienation of vehicles that have become the subject of encroachment, it is advisable to seize them and store them in special penalty areas. In general, the specific features of assigning and conducting automotive expertise are similar to the specific features of commodity research.

This study believes that the conclusions of experts obtained from the results of commodity and automotive research are of great importance for the investigation since they allow stating the fact of causing material damage to the victim and contribute to determining the actual amount of damage caused, which can be recovered in favour of the victim by filing a civil claim.

The next type of forensic examination is tracological, the varieties of which are: fingerprint examination, examination of human footprints and shoe traces, traces of paws and teeth of animals, traces of breaking and tools, means of mass production, locking and safety devices, whole parts, edged weapons, and examination of nodes [17].

The main tasks of tracological expertise include: 1) identification or determination of generic (group) belonging of individually defined objects by materially fixed traces – reflections of their trace-forming surfaces; 2) diagnostics (establishment of properties, states) of objects; 3) situational tasks (establishment of the mechanism of trace formation, etc.); 4) establishment of facts related to spatial, functional, structural, dynamic, and some other characteristics of the trace-forming process, and features of trace-forming objects [17].

An important feature that affects the results of tracological studies is the set of objects that should be sent to the expert: 1) a trace with the object carrier, and if impossible – a copy of the trace; 2) the object that may have left a trace; 3) if necessary – diagrams and data on the place, time of detection of traces, conditions in which objects with traces were before they were sent for examination [18].

Determining the possibilities and features of the appointment of forensic tracological examinations,

the main source of receipt of objects for tracological research is the inspection of the scene of the accident. According to A.V. Bodnar, the environment at the scene of an accident in proceedings for destruction or damage to property may contain all types of tracological traces formed as a result of mechanical, chemical, biological, and temperature effects.

The specificity of intentional destruction or damage to the property of a law enforcement officer is that they are characterised by the presence of traces formed mainly as a result of mechanical and temperature exposure. Therewith, as the analysis of the study shows, tracological examinations aimed at establishing the mechanism of destruction or damage to the property of a law enforcement officer are appointed by investigators only in case of detection of the instrument of committing a criminal offence (firearms, knives, axes, etc.). Moreover, for most criminal offences, where, for example, there was a collision of wheeled vehicles or their damage by striking individual fragments of real estate (for example, kicking headlights, side mirrors, etc.), no expert examinations were assigned. This allows concluding that investigators do not fully use the possibilities of tracological examinations.

The criminal proceedings under study are characterised by tracological examinations aimed at identifying traces of the bottoms of shoes and vehicles based on tire tracks. In this context, the tire prints of a car found on the ground may not always identify the vehicle that was at the scene of the crime.

The inability to identify a vehicle is often also due to the fact that by the time it is sent for forensic examination, the wheels or tires may be replaced. In this regard, to ensure the identification of the car, traces of which were found during the inspection of the scene, as noted by M.H. Chernets, it is necessary to conduct the following actions: 1) in addition to tire prints, identify the vehicle, it is necessary to use witness statements regarding the model and colour of the vehicle, traces of scree glass and paint materials at the scene of the accident and damage to the car itself; 2) determine the fact of replacing tires on the car after committing a crime, the investigator should remove all sets of tires that may be found in the suspect's household or garage; 3) confirm the fact of replacing tires on a particular car by interrogating employees of service stations located near the suspect's place of residence or on the way of the car from the crime scene to their house [19].

As for the examination of materials, substances, and products, the need for its appointment takes place in those criminal proceedings of the category under study that are committed by arson. They are also characterised by the appointment of fire and technical examinations.

Forensic investigation of a fire site requires the collection, analysis, and interpretation of physical evidence found at the scene to help determine whether the fire was the result of an accident or intentional action. Standardised methods are usually used as part of an investigation to determine whether an accelerator (such as gasoline) has been used to initiate or increase the speed of fire spread [20]. Under these circumstances, the examination of petroleum products, fuel, and lubricants is quite common. Due to this type of examination, it is possible to determine the flammability group of a particular material, the speed of flame propagation through a particular material, the duration of combustion of individual objects in specific conditions, the ignition temperature, combustion of petroleum products, and any other materials [2]. Typical questions that are set for experts when appointing an expert examination of petroleum products, fuel, and lubricants are:

1. Do the objects provided for research belong to petroleum products, fuel, and lubricants? If so, which ones?
2. Are there any traces of petroleum products, fuel, and lubricants, flammable or combustible liquids (in residues seized at the fire site or samples taken from a person) on the objects provided for research?
3. Do the samples of petroleum products provided for research have a common generic, group affiliation, and previously formed a single volume (single mass) [17]?

Criminal proceedings of the category under study are also characterised by the appointment of comprehensive forensic examinations. The main procedural features of a comprehensive expert examination are the following:

- establishing not only factual data but also circumstances that need to be proved in the case;
- research conducted based on the relationship of various fields of knowledge, techniques, and methods;
- conducting an expert examination by several (at least two) experts who have different specialities (specialisations) and, accordingly, dividing functions between them;
- a complex set of expert studies, each of which is independent in procedural terms, but is linked by a single purpose;
- a single study does not exclude the possibility of a separate examination of the object of research;
- joint analysis and collegial assessment of the conducted research; logical coherence and consistency of the obtained conclusions; formatting of a joint conclusion [21].

Based on the results of the analysis of the investigative and judicial practice of analysing criminal offences of the category under study, it is concluded that the most common are such complex forensic examinations as complex automotive and traccological,

and complex forensic fire-technical, materials, and traccological. A fairly common procedural form of special knowledge, which is used in the investigation of intentional destruction or damage to the property of a law enforcement officer, is the involvement of specialists. According to Art. 71 of the Criminal Procedure Code of Ukraine, a specialist in criminal proceedings is a person who has special knowledge and skills in using technical or other means and can provide advice during pre-trial investigation and judicial proceedings on issues that require appropriate special knowledge and skills [10]. In other words, the investigator has the right to involve a specialist in obtaining technical assistance or advice that provides for the use of special knowledge.

The specialist draws the attention of the person conducting the investigation to the circumstances relevant to the criminal proceedings, identified by them in the process of investigation of traces, objects, technical means, tools, and devices that could have been used during the commission of the crime. It provides the necessary reference data; notes the circumstances that contributed to the commission of the crime; expresses considerations about the possibility of verifying the collected data on forensic records (collections, file cabinets, information-search engines, an automated data bank). Given the above, an inspection of the scene without a specialist can be regarded as a tactical error [3].

Based on the results of the analysis of materials of criminal proceedings of the category under study, it can be concluded that most often investigators involve forensic inspectors. The interaction of the investigator and forensic inspectors during the pre-trial investigation of criminal offences should be understood as the joint coordinated activity of these entities using technical or other means during the detection, recording, seizure, packaging, and preliminary research of trace information, technical and forensic support for recording the course and results of investigative (search) actions to ensure the effectiveness of criminal proceedings [22].

A forensic inspector, as a specialist, can also be involved in an inspection, investigative experiment, search, and other investigative actions, if the investigator considers this necessary. Its main function is to provide direct technical assistance in fixing the course of investigative action, finding, removing, and packaging material evidence, drawing up schemes, plans, etc. -[4]. In addition, the forensic inspector has the right to conduct measurements, photographing, sound or video recording, draw up plans and diagrams, produce graphic images of the examined place or individual things, prints, and casts, inspect and seize things and documents that are relevant for criminal proceedings [23].

A characteristic feature of the group of criminal offences under study is conducting an additional inspection of the scene of an accident, and inspections of objects or other premises, searches, and investigative experiments. Forensic inspectors and specialists in the field of fire safety, specialists in the field of expertise of materials, substances, and products, employees of the state emergency service of Ukraine and other bodies and institutions are involved in these investigative (search) actions.

## ■ Conclusions

The conducted study allowed drawing the following conclusions:

1. Experts and specialists are carriers of special knowledge, the use of which is the main guarantee of ensuring an effective investigation of intentional destruction or damage to the property of a law enforcement officer.

2. Typical examinations during the investigation of intentional destruction or damage to the property of a law enforcement officer should be considered: commodity (42 %), automotive (85 %), tracological (22 %), materials, substances, and products (21%), fire-technical (12 %), photographic and portrait (9 %), forensic psychiatric (8 %), video or audio recordings (7 %), explosive-technical (5 %), molecular-genetic (3%), etc.

## ■ References

- [1] Avdieieva, H.K. (2021). The place of forensic examination in the scientific and technical support of investigative activities in the context of adversarial criminal proceedings. *The Fight Against Crime*, 41, 88-93. doi: 10.31359/2079-6242-2021-41-88.
- [2] Bastide, B., Porter, G., & Renshaw, A. (2021). The effects of heat on the physical and spectral properties of bloodstains at arson scenes. *Forensic Science International*, 325, article number 110891. doi: 10.1016/j.forsciint.2021.110891.
- [3] Bodnar, A.V. (2018). Tracological expertise during the investigation of property destruction or damage. *Scientific Bulletin of the National Academy of Internal Affairs*, 2(107), 281-292.
- [4] Bodnar, A.V. (2019). Use of specialized knowledge in the investigation of destruction or damage to property. Candidate's thesis. Kyiv: National University.
- [5] Buzynarskyi, M.Yu. (2011). Method of investigation of intentional elimination or damage of state and private property by an arson. Extended abstract of candidate's thesis. Kyiv: National University.
- [6] Chernets, M.H. (2021). Problems of vehicle identification by tire marks on the soil. *Law and Safety*, 2(81), 111-115. doi: 10.32631/pb.2021.2.14.
- [7] DeTata, D. (2018). Forensic Sciences-arson residues. *Reference Module in Chemistry, Molecular Sciences and Chemical Engineering*. doi: 10.1016/b978-0-12-409547-2.14450-6.
- [8] Furman, Ya.V., Prykhodko, Yu.P., Nechesniuk, M.V., & Kharechko, N.V. (2018). *The actions of the members of the investigative task force at the scene related to the explosion*. Kyiv: NAVS.
- [9] Husieva, V.O. (2021). *Theoretical bases of a methods of investigating crimes against authority of public authorities in terms of law enforcement activity*. Doctor's thesis. Kharkiv: National University.
- [10] Criminal Procedural Code of Ukraine. No. 4651-VI. (2012, April). Retrieved from <http://zakon0.rada.gov.ua/laws/show/4651-17>.
- [11] Liu, J.-da, & Bian, C. (2018). Thermogravimetric analysis of arson evidence. *Procedia Engineering*, 211, 456-462. doi: 10.1016/j.proeng.2017.12.036.

- [12] Lukianchykov, Ye.D., Lukianchykov, B.Ye., & Petriaiev, S.Yu. (2019). The use of special knowledge in criminal proceedings. *Bulletin of the National Technical University of Ukraine "Kyiv Polytechnic Institute"*, 4(44), 125-130.
- [13] Lysenko, N.V., & Martosenko, M.H. (2021). Possibilities of complex forensic commodity examinations. In *Grundlagen Der Modernen Wissenschaftlichen Forschung: Proceedings of the International Scientific and Practical Conference* (pp. 312). Vinnytsia: National University. doi: 10.36074/logos-10.09.2021.26.
- [14] Malyshko, O.V., & Yesypenko, O.H. (2021). General aspects of automotive examination. *Actual Issues of Theory and Practice in the Field of Law, Education, Social and Behavioral Sciences: Proceedings of the International Scientific and Practical Conference* (pp. 305-308). Chernihiv: DPTS.
- [15] Motliakh, O. (2021). Special knowledge in polygraphology and their features. *Scientific Herald of the National Academy of Internal Affairs*, 1(118), 58-66. doi: 10.33270/01211181.58.
- [16] Order of the Ministry of Internal Affairs of Ukraine "About the statement of the Instruction on appointment and carrying out of forensic examinations and expert researches and Scientific and methodical recommendations concerning preparation and appointment of forensic examinations and expert researches". No. 390. (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0705-98#Text>.
- [17] Pandohee, J., Hughes, J.G., Pearson, J.R., & Jones, A.H. (2020). Chemical fingerprinting of petrochemicals for arson investigations using two-dimensional gas chromatography – flame ionisation detection and multivariate analysis. *Science & Justice*, 60(4), 381-387. doi: 10.1016/j.scijus.2020.04.004.
- [18] Pchelina, O. (2020). Interaction between investigators and forensic inspectors during the pre-trial investigation of criminal offenses. *Juris Europensis Scientia*, 1, 107-111. doi: 10.32837/chern.v0i1.59.
- [19] Shevchenko, O.V. (2017). *Use of special commodity knowledge during pre-trial investigation. Candidate's thesis*. Kyiv: National University.
- [20] Slobodianiuk, B.K. (2016). *The investigation of intentional destruction or damage of another's property. Candidate's thesis*. Irpin: National University.
- [21] The verdict of the Leninsky district court of Poltava court case No. 532/2033/18. (2019, October). Retrieved from <https://reyestr.court.gov.ua/Review/85461427>.
- [22] Judgment of the Okhtyrka City District Court of Sumy Region court case No. 583/3476/18. (2019, September). Retrieved from <https://reyestr.court.gov.ua/Review/84027151>.
- [23] Law of Ukraine "On forensic examination". No. 4038-XII. (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12#Text>.

## ■ Список використаних джерел

- [1] Авдєєва Г. К. Місце судової експертизи у науково-технічному забезпеченні слідчої діяльності в умовах змагального кримінального провадження. *Питання боротьби зі злочинністю*. 2021. № 41. С. 88–93. doi: 10.31359/2079-6242-2021-41-88.
- [2] Bastide B., Porter G., Renshaw A. The effects of heat on the physical and spectral properties of bloodstains at arson scenes. *Forensic science international*. 2021. No. 325. article number 110891. doi: 10.1016/j.forsciint.2021.110891.
- [3] Боднар А. В. Трасологічна експертиза під час розслідування знищення або пошкодження майна. *Науковий вісник Національної академії внутрішніх справ*. 2018. Вип. 2. № 107. С. 281–292.
- [4] Боднар А. В. Використання спеціальних знань під час розслідування знищення або пошкодження майна: дис. ... канд. юрид. наук: 12.00.09. Київ, 2019. 205 с.
- [5] Бузинарський М. Ю. Методика розслідування умисного знищення або пошкодження майна шляхом підпалу: автореф. дис. ... канд. юрид. наук: 12.00.09. Київ, 2011. 19 с.
- [6] Чернець М. Г. Проблеми ідентифікації транспортного засобу за слідами шин на ґрунті. *Право і безпека*. 2021. Вип. 2. № 81. С. 111–115. doi: 10.32631/pb.2021.2.14.
- [7] DeTata D. Forensic Sciences-arson residues. *Reference module in chemistry, molecular sciences and chemical engineering*. 2018. doi: 10.1016/b978-0-12-409547-2.14450-6.
- [8] Фурман Я. В., Приходько Ю. П., Нечеснюк М. В., Харечко Н. В. Дії учасників слідчо-оперативної групи на місці події, пов'язаному з вибухом: метод. рек. Київ: НАВС, 2018. 45 с.
- [9] Гусєва В. О. Теоретичні основи методики розслідування злочинів проти авторитету органів державної влади у сфері правоохоронної діяльності: дис. ... д-ра юрид. наук: 12.00.09. Харків, 2021. 538 с.

- [10] Кримінальний процесуальний кодекс України: Закон України від 13 квіт. 2012 р. № 4651-VI. URL: <http://zakon0.rada.gov.ua/laws/show/4651-17>.
- [11] Liu J.-da, Bian C. Thermogravimetric analysis of arson evidence. *Procedia engineering*. 2018. No. 211. P. 456–462. doi: 10.1016/j.proeng.2017.12.036.
- [12] Лук'янчиков Є. Д., Лук'янчиков Б. Є., Петряєв С. Ю. Використання спеціальних знань у кримінальному провадженні. *Вісник Національного технічного університету України «Київський політехнічний інститут»*. 2019. Вип. 4. № 44. С. 125–130.
- [13] Лисенко Н. В., Мартосенко М. Г. Можливості комплексних судових товарознавчих досліджень. *Grundlagen der modernen wissenschaftlichen Forschung: Міжнар. наук.-практ. конф.* (Вінниця, 10 верес. 2021 р.). Вінниця: Європ. наук. платформа, 2021. 312 с. doi: 10.36074/logos-10.09.2021.26.
- [14] Малишко О. В., Єсипенко О. Г. Загальні аспекти автотоварознавчої експертизи. *Актуальні питання теорії та практики в галузі права, освіти, соціальних та поведінкових наук – 2021: матеріали Міжнар. наук.-практ. конф.* (Чернігів, 22–23 квіт. 2021 р.). Чернігів: ДПТС, 2021. 398 с.
- [15] Мотлях О. Спеціальні знання в поліграфології та їх особливості. *Науковий вісник Національної академії внутрішніх справ*. 2021. Т. 1. № 118. С. 58–66. doi: 10.33270/01211181.58.
- [16] Про затвердження Інструкції про призначення та проведення судових експертиз та експертних досліджень та Науково-методичних рекомендацій з питань підготовки та призначення судових експертиз та експертних досліджень: наказ Міністерства юстиції України від 8 жовт. 1998 р. № 53/5. URL: <http://zakon2.rada.gov.ua/laws/show/z0705-98>.
- [17] Pandohee J., Hughes J. G., Pearson J. R., Jones A. H. Chemical fingerprinting of petrochemicals for arson investigations using two-dimensional gas chromatography – flame ionisation detection and multivariate analysis. *Science & justice*. 2020. Vol 60. No 4. P. 381–387. doi: 10.1016/j.scijus.2020.04.004.
- [18] Пчеліна О. Взаємодія слідчого та інспекторів-криміналістів під час досудового розслідування кримінальних правопорушень. *Знання європейського права*. 2020. № 1. С. 107–111. doi: 10.32837/chern.v0i1.59.
- [19] Шевченко О. В. Використання спеціальних товарознавчих знань під час досудового розслідування: дис. ... канд. юрид. наук: 12.00.09. Київ, 2017. 317 с.
- [20] Слободянюк Б. К. Розслідування умисного знищення або пошкодження чужого майна: дис. ... канд. юрид. наук: 12.00.09. Ірпінь, 2016. 238 с.
- [21] Вирок Ленінського районного суду м. Полтава від 29 жовт. 2019 р., судова справа № 532/2033/18. URL: <https://reyestr.court.gov.ua/Review/85461427>.
- [22] Вирок Охтирського міськрайонного суду Сумської області від 4 верес. 2019 р., судова справа № 583/3476/18. URL: <https://reyestr.court.gov.ua/Review/84027151>.
- [23] Про судову експертизу: Закон України від 25 лют. 1994 р. № 4038-XII. URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text>.

## Використання спеціальних знань під час розслідування умисного знищення або пошкодження майна працівника правоохоронного органу

Алла Петрівна Чиж

Харківський національний університет внутрішніх справ  
61000, проспект Льва Ландау, 27, Харків, Україна

■ **Анотація.** Метою дослідження є визначення типових форм спеціальних знань, які використовують слідчі під час розслідування умисного знищення або пошкодження майна працівника правоохоронного органу, їхніх можливостей та окремих проблемних питань, що виникають у процесі їх реалізації. Для досягнення поставленої мети застосовано спеціальні методи дослідження: системного аналізу, порівняльно-правовий, системно-структурний, а також загальнонаукові методи, зокрема діалектичний та метод аналогії. Наукова новизна дослідження полягає в тому, що на підставі аналізу слідчої та судової практики розслідування умисного знищення або пошкодження майна працівника правоохоронного органу вперше визначено ті форми спеціальних знань, які переважно застосовують слідчі для розв'язання окремих тактичних завдань. Також окреслено можливості й помилки, яких припускаються слідчі під час призначення деяких судових експертиз, а саме: товарознавчі, зокрема автотоварознавчі, трасологічні, пожежно-технічні, експертизи матеріалів, речовин і виробів. Доведено вагоме значення спеціалістів у проведенні оглядів місць подій та предметів, тобто тих слідчих (розшукових) дій, які є найпоширенішими для кримінальних проваджень досліджуваної категорії. Обґрунтовано наукову позицію стосовно того, що експерти й спеціалісти є носіями спеціальних знань, використання яких є головною гарантією забезпечення ефективного розслідування умисного знищення або пошкодження майна працівника правоохоронного органу. Визначено типові види судових експертиз, зокрема й комплексних, які призначають слідчі під час розслідування злочинів цього виду. Акцентовано, що основним фактором, який має вирішальне значення у швидкому та повному вирішенні питань, що поставлені слідчим на вирішення судового експерта, є надання повних вихідних даних як щодо події, що відбулася, так і щодо об'єктів, направлених на дослідження. Обґрунтовано, що спеціалістів у кримінальних провадженнях, розпочатих у зв'язку з вчиненням умисного знищення або пошкодження майна працівника правоохоронного органу, найчастіше залучають до оглядів місць події та предметів, обшуків, слідчих експериментів

■ **Ключові слова:** знищення або пошкодження майна; працівник правоохоронного органу; спеціальні знання; експерт; спеціаліст; судова експертиза

UDC 340.12:342.7  
DOI: 10.33270/01211203.66

## Filing a Constitutional Complaint as a Tool for Protecting Human Rights in Ukraine

Vasyl V. Kopcha\*

National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine

■ **Abstract.** The purpose of the study is to consider the constitutional complaint in Ukraine as a new tool for the protection and restoration of human rights, the authority of which is constantly growing. Every year, the number of complaints filed increases rapidly, which is due to several factors, which are analysed in the study. The methodological tools were chosen in accordance with the purpose of the study, which is to analyse the Ukrainian model of constitutional complaints in the context of the initial experience of their consideration in the Constitutional Court of Ukraine. Firstly, this is about the “originality” of a constitutional complaint as a tool that a person can use to protect themselves from state interference at the level of the “law of Ukraine”, which was not previously provided for within the national legal order. Secondly, in March-April 2018, the Constitutional Court of Ukraine reorganised its activities, creating a Grand Chamber, two senates and collegiums, which activated the mechanism for considering constitutional complaints in Ukraine. Although no decision has been made as of September 1, 2018, constitutional proceedings in dozens of cases on constitutional complaints have reached the finish line, so in the near future, the public will get acquainted with the first decisions. Despite the fact that the essence of the constitutional complaint is actively investigated by Ukrainian researchers, the subject of the study does not lose its relevance, since the constitutional complaint as a phenomenon is only beginning to be established in the constitutional practice of Ukraine

■ **Keywords:** Constitution, human rights, constitutional complaint, Constitutional Court of Ukraine

### ■ Introduction

First of all, it should be noted that the constitutional complaint as an instrument has become an important component of the right to judicial protection, outlined by the Constitution of Ukraine in Art. 55. According to part four of Art. 55 of the Constitution of Ukraine, “everyone is guaranteed the right to file a constitutional complaint with the Constitutional Court of Ukraine on the grounds established by this Constitution and in accordance with the procedure established by law”.

The following researchers devoted their works to the study of these problems: K.B. Airiian [15], M.M. Hultai [2-4], H. Berchenko, Ye. Tkachenko [4], R. Chornolutskyi [6], O. Shcherbaniuk [7], and others. However, many aspects of the problem raised require thorough research.

The wording of the appeal with a constitutional complaint “in accordance with the procedure determined by law” became an obstacle to the consideration of a constitutional complaint by the Constitutional Court of Ukraine in the period after their implementation in the constitutional order on September 30, 2016, by the law on amendments to the Constitution of Ukraine of June 2, 2016 [8].

The scientific originality of the study consists in the analysis of the features of a constitutional complaint identified in the professional literature, including the following: 1) the complaint should be related to a specific case in which the final decision of the competent authorities has been made; 2) the basis of the complaint should only be a violation of rights and freedoms that are directly enshrined in the text of the Basic Law of the state; 3) the complaint has a subsidiary character, which means that it can be introduced only after all other available remedies have been exhausted; 4) consideration of the complaint falls within the competence of the constitutional justice body, whose decision is final and obliges other

### ■ Suggested Citation:

Kopcha, V.V. (2021). Filing a constitutional complaint as a tool for protecting human rights in Ukraine. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 66-70. doi:10.33270/01211203.66

■ \*Corresponding author

■ Received: 02.06.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

state bodies [9]. This study does not fully share these features, given their excessive generalisation.

## ■ Results and Discussion

In fact, this trial was initiated in the Constitutional Court of Ukraine in April-May 2018.

According to statistics, in 2018, 491 constitutional complaints were filed with the Constitutional Court of Ukraine [10].

The key features of the model of constitutional complaint in Ukraine are laid in the new Art. 151-1 of the Constitution of Ukraine: “The Constitutional Court of Ukraine decides on compliance with the Constitution of Ukraine (constitutionality) of the law of Ukraine on the constitutional complaint of a person who believes that the law of Ukraine applied in the final court decision in their case contradicts the Constitution of Ukraine. A constitutional complaint may be lodged if all other remedies have been exhausted”.

In this regard, it should be noted that although the construction of a constitutional complaint does not provide for its conditionality to protect basic (constitutional) human rights and freedoms, such constitutional wording should not be interpreted in a different context. The legal content of the complaint as an individual instrument determines the inextricable connection of the constitutional complaint as an institution with the need to protect (restore) human rights – in this case, this is about a specific person or group of persons. Focusing on the constitutional formula of Art. 151-1 of the Constitution of Ukraine (“when making a final court decision in its case”), the norm of the Constitution also certifies the connection of this legal remedy with protection against violation of the rights of an identified subject. Even if, based on the results of consideration of a constitutional complaint, the normative potential of human rights violations is clarified, which reflects the systemic problem of constitutional legal order (which should be primarily aimed at the activities of the Constitutional Court), this does not change the nature of the constitutional complaint [11].

The outlined features of the constitutional complaint model should be taken in the context and in relation to other constitutional norms related to constitutional jurisdiction. For example, Art. 152 of the Constitution of Ukraine provides: “Laws and other acts by the decision of the Constitutional Court of Ukraine are recognised as unconstitutional in whole or in a separate part, if they do not comply with the Constitution of Ukraine or if the procedure established by the Constitution of Ukraine for their consideration, adoption or entry into force has been violated.” It follows that a person (subject of the right to a constitutional complaint) can justify

the unconstitutionality of a law that is “applied in a final court decision in their case” on the grounds of both the content of the law and on the grounds of violating the constitutional procedure for its consideration, adoption, or entry into force.

Thirdly, the Law of Ukraine “On the Constitutional Court of Ukraine” (hereinafter referred to as the Law), adopted on July 13, 2017, regulated the model of a constitutional complaint in more detail [12].

Art. 55 of the Law stipulates that “a constitutional complaint is a written request submitted to the court for verification of compliance with the Constitution of Ukraine (constitutionality) of the law of Ukraine (its individual provisions), which is applied in the final court decision on the case of the subject of the right to a constitutional complaint” (part one of the article). In the second part of Art. 55 of the Law, it is established that the constitutional complaint contains: 1) the surname, first name, patronymic (if any) of a citizen of Ukraine, a foreigner, or a stateless person, the address of the registered place of residence of the person (for a foreigner or a stateless person – the place of stay) or the full name and location of the legal entity, and the number of the means of communication, e-mail address, if any; 2) information about the authorised person acting on behalf of the subject of the right to a constitutional complaint; 3) a summary of the final court decision in which the relevant provisions of the law of Ukraine were applied; 4) a description of the course of consideration 5) specific provisions of the law of Ukraine that should be checked for compliance with the constitution of Ukraine, and specific provisions of the Constitution of Ukraine that should be checked for compliance with the law of Ukraine; 6) justification of claims about the unconstitutionality of the law of Ukraine (its individual provisions) indicating which of the human rights guaranteed by the Constitution of Ukraine, in the opinion of the subject of the right to a constitutional complaint, was violated as a result of the application of the law; 7) information about documents and materials referred to by the subject of the right to a constitutional complaint, with the provision of copies of these documents and materials; 8) A list of documents and materials that are attached.

Art. 56 of the Law stipulates that “the subject of the right to a constitutional complaint is a person who believes that the law of Ukraine (its individual provisions) applied in the final court decision in their case contradicts the Constitution of Ukraine. Subjects of the right to a constitutional complaint do not include legal entities under public law”. It is also established that “an individual signs a constitutional complaint personally”.

Art. 77 of the law stipulates that a constitutional complaint is considered admissible if it meets

the requirements provided for in Art. 55, 56 of this Law, and if: 1) all national legal remedies have been exhausted (if there is a court decision adopted in the order of appeal review that has entered into legal force, and in the case of the possibility of cassation appeal provided for by law – a court decision issued in the order of cassation review); 2) no more than three months have elapsed from the date of entry into force of the final court decision in which the law of Ukraine (its individual provisions) has been applied. The second part of Art. 77 of the Law also stipulates that “as an exception, a constitutional complaint may be accepted outside the requirements established by paragraph 2 of part one of this article, if the Court considers its consideration necessary for reasons of public interest.” Important for the admissibility of a constitutional complaint is part four of Art. 77, which provides: “the Court refuses to open constitutional proceedings, declaring a constitutional complaint inadmissible if the content and requirements of the constitutional complaint are obviously unsubstantiated or there is an abuse of the right to file a complaint”.

According to Art. 78 of the Law, the means of securing a constitutional complaint are established, which provide that during the consideration of a constitutional complaint, the Grand Chamber, in exceptional cases, on its own initiative, may take measures to secure a constitutional complaint by issuing an interim order, which is an enforcement document (part one), and the basis for securing a constitutional complaint is the need to prevent irreversible consequences that may occur in connection with the execution of a final court decision (part two).

The specific features of this model of constitutional complaint allow characterising it as “partially normative”, its subject matter is covered exclusively by the “law of Ukraine”, effectively depriving a per-

son at the constitutional level of protecting the right guaranteed by the Constitution of Ukraine from their violation by other normative acts, first of all – from the actions (inaction) of public authorities. On the other hand, only the Law of Ukraine “On the Constitutional Court of Ukraine”, and not the norm of the Constitution of Ukraine, provides for a constitutional complaint to protect basic (constitutional) human rights and freedoms. This approach does not seem acceptable, since it allows a person (after a trial and a final decision) to transfer virtually any legal dispute through a constitutional complaint directly to the Constitutional Court if only the person believes that the relevant act of legislation “contradicts the Constitution of Ukraine”. This can be a civil, administrative, economic-legal dispute, or other types of disputes. The study also supports the opinion that the definition in Art. 151-1 of the Basic Law of the subject of filing a constitutional complaint also certifies its limited nature, since it refers only to the “person”. Expanding the list of subjects of filing a complaint at the level of the Law of Ukraine “On the Constitutional Court” is appropriate, but rather doubtful, given the constitutionality (Lemak, 2017, p. 52-54) [11].

## ■ Conclusions

The “partially normative” model of constitutional complaint, which was introduced in Ukraine, can potentially become an effective tool for protecting human rights guaranteed by the Basic Law. The condition for its effectiveness is the effective activity of the Constitutional Court of Ukraine. Proposals to “expand” the subject of appeal in it are considered premature.

The effectiveness of a constitutional complaint also depends on understanding its role as a means of combining the protection of individual human rights with the protection of the objective rule of law, which is defined in the Constitution of Ukraine.

## ■ References

- [1] Airian, K.B. (2014). Constitutional and legal essence of the institute “constitutional complaint”. *Legal Bulletin of the University “KROK”*, 18, 20-25.
- [2] Airian, K.B. (2014). The importance of introducing the institute of constitutional complaint for full protection and restoration of violated personal rights. *Bulletin of the Bar Academy of Ukraine*, 11(1), 19-26.
- [3] Chornolutskyi, R.V. (2020). Constitutional complaint as a new institution of constitutional law of Ukraine. *Social Kaleidoscope*, 1(1). doi: 10.47567/bomivit.1-1.2020.03.
- [4] Hultai, M. (2011). Experience of functioning of the institute of constitutional complaint in the Federal Republic of Germany and prospects of its introduction in Ukraine. *Bulletin of the Academy of Legal Sciences of Ukraine*, 3, 55-67.
- [5] Hultai, M. (2012). Constitutional complaint as an institute of constitutional law. *Word of the National School of Judges of Ukraine*, 1, 111-120.
- [6] Hultai, M. (2012). Constitutional complaint as a way to resolve the constitutional and legal dispute. *Viche*, 20, 8-11.

- [7] Hultai, M. (2013). On the question of forming the doctrine of the constitutional complaint in Ukraine. *Bulletin of the National Academy of Legal Sciences of Ukraine*, 3, 117-127. Retrieved from [http://nbuv.gov.ua/UJRN/vapny\\_2013\\_3\\_17](http://nbuv.gov.ua/UJRN/vapny_2013_3_17).
- [8] Hultai, M. (2013). Complete or normative constitutional complaint: Search for a national model. *Bulletin of the Academy of Legal Sciences of Ukraine*, 1, 24-33.
- [9] Hultai, M.M. (2012). The idea of a constitutional complaint in the modern constitutional and legal doctrine of Ukraine. *Journal of Kyiv University of Law*, 2, 85-90.
- [10] Constitutional complaints received by the Constitutional Court of Ukraine as of September 17, 2018. (n.d.). Retrieved from <http://www.ccu.gov.ua/novyna/konstytuciyini-skargy-shcho-nadiyshly-do-konstytuciyogo-suduukrayiny-za-stanom-na-17-3>
- [11] Lemak, V.V. (2016). Constitutional complaint: the experience of Central Europe and possible lessons for Ukraine. *Public Law*, 4, 49-56.
- [12] Lemak, V.V., & Petryshyn, O.V. (2017). Constitutional complaint in Ukraine: problems of the implementation mechanism. *Bulletin of the Academy of Legal Sciences of Ukraine*, 2, 79-88.
- [13] Shcherbaniuk, O. (2018). Individual constitutional complaint as a means of ensuring constitutional democracy. *Law of Ukraine*, 12, 77-91. doi: 10.33498/louu-2018-12-077.
- [14] Tkachenko, Ye., & Berchenko, H. (2018). The right to appeal with an individual constitutional complaint in Ukraine: Theoretical and practical aspects. *Law of Ukraine*, 12, 92-113. doi: 10.33498/louu-2018-12-092.
- [15] Law of Ukraine "On the Constitutional Court of Ukraine" from July 13, 2017, No. 2147a-VIII. Official Gazette of Ukraine, 63, 25, 1912.
- [16] Law of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)" from June 2, 2016, No. 1401-VIII. Official Gazette of Ukraine, 51, 8, 1799.

#### ■ Список використаних джерел

- [1] Айріян К. Б. Конституційно-правова сутність інституту «конституційна скарга». *Правничий вісник Університету «КРОК»*. 2014. Вип. 18. С. 20–25. URL: [http://nbuv.gov.ua/UJRN/Pvuk\\_2014\\_18\\_5](http://nbuv.gov.ua/UJRN/Pvuk_2014_18_5).
- [2] Айріян К. Б. Важливість запровадження інституту конституційної скарги для повноцінного захисту та відновлення порушених прав особи. *Вісник Академії адвокатури України*. 2014. Т. 11. № 1. С. 19–26. URL: [http://nbuv.gov.ua/UJRN/vaau\\_2014\\_11\\_1\\_5](http://nbuv.gov.ua/UJRN/vaau_2014_11_1_5).
- [3] Чернолуцький Р. В. Конституційна скарга як новий інститут конституційного права України. *Соціальний калейдоскоп*. 2020. № 1. doi: 10.47567/bomivit.1-1.2020.03.
- [4] Гультай М. Досвід функціонування інституту конституційної скарги у Федеративній Республіці Німеччині та перспективи його запровадження в Україні. *Вісник Академії правових наук України*. 2011. № 3. С. 55–67.
- [5] Гультай М. Конституційна скарга як інститут конституційного права. *Слово Національної школи суддів України*. 2012. № 1. С. 111–120.
- [6] Гультай М. Конституційна скарга як спосіб вирішення конституційно-правового спорту. *Віче*. 2012. № 20. С. 8–11.
- [7] Гультай М. До питання про формування доктрини конституційної скарги в Україні. *Вісник Національної академії правових наук України*. 2013. № 3. С. 117–127.
- [8] Гультай М. Повна чи нормативна конституційна скарга: пошук національної моделі. *Вісник Академії правових наук України*. 2013. № 1. С. 24–33.
- [9] Гультай М. М. Ідея конституційної скарги у сучасній конституційно-правовій доктрині України. *Часопис Київського університету права*. 2012. № 2. С. 85–90.
- [10] Конституційні скарги, що надійшли до Конституційного Суду України за станом на 17 верес. 2018 р. URL: <http://www.ccu.gov.ua/novyna/konstytuciyini-skargy-shcho-nadiyshly-do-konstytuciyogo-sudu-ukrayiny-zastanom-na-17-3>.
- [11] Лемак В. В. Конституційна скарга: досвід держав Центральної Європи і можливі уроки для України. *Публічне право*. 2016. № 4. С. 49–56.
- [12] Лемак В. В., Петришин О. В. Конституційна скарга в Україні: проблеми механізму впровадження. *Вісник Національної академії правових наук України*. 2017. № 2. С. 79–88. URL: [http://nbuv.gov.ua/UJRN/vapny\\_2017\\_2\\_9](http://nbuv.gov.ua/UJRN/vapny_2017_2_9).

- [13] Щербанюк О. Індивідуальна конституційна скарга як засіб забезпечення конституційної демократії. *Право України*. 2018. № 12. С. 77–91. doi: 10.33498/loiu-2018-12-077.
- [14] Ткаченко Є., Берченко Г. Право на звернення з індивідуальною конституційною скаргою в Україні: теоретикопрактичні аспекти. *Право України*. 2018. № 12. С. 92–113. doi:10.33498/loiu-2018-12-092.
- [15] Про Конституційний Суд України: Закон України від 13 лип. 2017 р. № 2147а-VIII. Офіційний вісник України. 2017. № 63. С. 25. Ст. 1912.
- [16] Про внесення змін до Конституції України (щодо правосуддя): Закон України від 2 черв. 2016 р. № 1401-VIII. Офіційний вісник України. 2016. № 51. С. 8. Ст. 1799.

## **Звернення з конституційною скаргою як інструмент захисту прав людини в Україні**

**Василь Васильович Копча**

Ужгородський національний університет  
88000, вулиця Університетська, 14, Ужгород, Україна

■ **Анотація.** Мета статті – розглянути конституційну скаргу в Україні як новий інструмент захисту та відновлення прав людини, авторитет якого постійно зростає. Щороку кількість поданих скарг стрімко збільшується, що зумовлено декількома чинниками, які й проаналізовано в статті. Методологія. Методологічний інструментарій обрано відповідно до поставленої мети статті, що полягає в аналізі вітчизняної моделі конституційної скарги в контексті початкового досвіду їх розгляду в Конституційному Суді України. По-перше, ідеться про «новизну» конституційної скарги як інструменту, яким людина спроможна захистити себе від державного втручання на рівні «закону України», чого раніше не було передбачено в межах національного правопорядку. По-друге, у березні–квітні 2018 року Конституційний Суд України реорганізував свою діяльність, створивши Велику палату, два сенати та колегії, чим було активізовано механізм розгляду конституційних скарг в Україні. Наукова новизна. Хоча станом на 1 вересня 2018 року жодного рішення не було ухвалено, конституційні провадження в десятках справ за конституційними скаргами вийшли на фінішну пряму, тож найближчим часом суспільство ознайомиться з першими рішеннями. Висновки. Попри те, що сутність конституційної скарги активно досліджують вітчизняні вчені, предмет дослідження не втрачає актуальності, оскільки конституційна скарга як феномен лише починає утверджуватися в конституційній практиці України

■ **Ключові слова:** Конституція, права людини, конституційна скарга, Конституційний Суд України

UDC 342.553  
DOI: 10.33270/01211203.71

## Constitutional and Legal Regulation of the Organisation and Activities of Public Authorities of Cities in Ukraine

Daryna I. Radomska\*

National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine

■ **Abstract.** The purpose of the study is to analyse the constitutional and legal regulation of the organisation and activities of public authorities of cities in Ukraine. The following tasks were outlined to achieve this goal: identify the constitutional foundations of the establishment of public authorities of cities; determine the circle of relevant bodies; specify the constitutional and legal status of public administration bodies of cities in Ukraine. The methodological basis of the paper was a set of general scientific and special methods, techniques, and means of scientific knowledge, and their complex application, aimed at achieving the goal and fulfilling the tasks of the study. Constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine is the object of a long-term investigation, which as a result, has various proposals for reforming this management system. The choice of methodological tools should ensure a systematic investigation of current trends in improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine. The application of the principle of consistency contributes to the examination of the institutional mechanism for the implementation of local public power in cities. The method of constitutional modelling enabled the development of proposals and recommendations for improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine. The scientific originality consists in the establishment of theoretical and methodological foundations for improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine and substantiating practical proposals for optimising the system of local public authorities of cities in Ukraine. In general, the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that covers local state executive authorities, which, on the one hand, include local state administrations and territorial bodies of central executive authorities, on the other – city heads, the city council and its executive body, which are local self-government bodies. Notably, local state administrations at the urban level operate only in the cities of Kyiv and Sevastopol, and they are also created in the districts of the respective cities. The head of state has the main influence on the establishment of local state administrations since it is they who appoint the relevant heads, who form their composition. Territorial bodies of central executive authorities at the city level perform not citywide managerial functions, but specific functions of the state assigned to the relevant central body. In turn, local self-government bodies – the city council and its executive body, the mayor, who is the main official of the territorial community of the city, in accordance with Art. 140 of the Constitution of Ukraine and the Law of Ukraine “On local self-government in Ukraine”, – are responsible for solving issues of local significance. Therewith, Ukraine, according to researchers, needs a decentralisation reform, which consists in reforming the city administration system, considering the successful experience of the EU countries

■ **Keywords:** polygraph; polygraphology; polygraph specialist; expert; special knowledge; forensic psychophysiological examination

---

■ **Suggested Citation:**

Radomska, D.I. (2021). Constitutional and legal regulation of the organisation and activities of public authorities of cities in Ukraine. *Scientific Journal of the National Academy of Internal Affairs*, 26(3), 71-76. doi: 10.33270/01211203.71

■ \*Corresponding author

■ Received: 16.07.2021; Revised: xx.xx.2021; Accepted: xx.xx.2021

■ **Introduction**

In the current conditions in Ukraine, the trend towards increasing the urban population continues, and the main resources are concentrated in cities. It is clear that the issue of implementing local self-government by territorial communities of cities is quite relevant. In addition, Ukraine has applied a mixed concept of local self-government, or the so-called concept of

municipal dualism, which provides for the implementation of management at the local level both through the implementation of local self-government and through the implementation of local state power.

The Constitution of Ukraine does not contain any specific provisions on city management. The norms defining the procedure for implementing appropriate management are contained in various sections of the Basic Law concerning the construction of the state apparatus in general and the principles of local self-government in Ukraine, in particular.

Constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that includes local state executive authorities and local self-government bodies. Separately, the Constitution of Ukraine defines the special status of two cities, the organisation of Management of which is outlined in special laws.

The issues of organising the exercise of local public power in Ukraine in general and some of its aspects, in particular, have been investigated by such researchers as: O. Batanov, Ya. Ben, V. Bordeniuk, N. Voitenko, S. Haiduchenko, B. Kalynovskyi, T. Kulyk, A. Shynkovych. Therewith, a comprehensive analysis of the constitutional and legal regulation of urban management issues in Ukraine was not conducted.

As of today, the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine requires revision, considering the problems of implementing local public authorities in Ukraine, and approaches to relevant reform should consider the successful experience of EU countries.

*The purpose of the study* is to analyse the constitutional and legal regulation of the organisation and activities of public authorities of cities in Ukraine. The following tasks must be completed to achieve this goal:

- identify the constitutional basis for the establishment of public authorities in cities;
- determine the circle of relevant bodies;
- establish the constitutional and legal status of public administration bodies of cities in Ukraine.

The scientific originality consists in the establishment of theoretical and methodological foundations for improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine and substantiating practical proposals for optimising the system of local public authorities of cities in Ukraine.

## ■ Results and Discussion

According to Art. 140 of the Constitution of Ukraine, in the cities of Ukraine, territorial communities, realising local self-government as the right to resolve issues

of local significance, form city councils, which also form their own executive bodies and elect the mayor.

Local state administrations as state executive authorities function only in cities with special status – Kyiv and Sevastopol (Art. 118 of the Constitution of Ukraine) [1].

According to part 3 of Art. 197 of the Electoral Code of Ukraine, the total composition of the council depends on the number of voters – members of the territorial community. Thus, the number of deputies of the local council is less than 10 thousand voters – 22 deputies; from 10 thousand to 30 thousand voters – 26 deputies; from 30 thousand to 50 thousand voters – 34 deputies; from 50 thousand to 100 thousand voters – 38 deputies; from 100 thousand to 250 thousand voters – 42 deputies; from 250 thousand to 500 thousand voters – 54 deputies; from 500 thousand to 1 million voters – 64 deputies; from 1 million to 2 million voters – 84 deputies; over 2 million voters – 120 deputies.

According to the population data of the Ministry of Finance for major cities of Ukraine, as of January 1, 2021, the population of Kyiv is 2962180, the next largest population is in the city of Dnipro – 980948, and the smallest – 50414 in Gorishni Plavni [2].

That is, the largest city council in terms of the number of deputies is formed in the capital of Ukraine, and the smallest is Gorishni Plavni. By the number of deputies, this is the range from 38 to 120. Considering the statistical data of the population of Ukrainian cities, it can be concluded that city councils function in Ukraine in the following quantitative composition: 38, 42, 54, 64, 84, 120 deputies of the local council.

In the cities of Ukraine, except for Kyiv and Sevastopol, which, according to the Constitution of Ukraine, are cities with special status, city councils form their own executive bodies.

According to Art. 1 of the Law of Ukraine “On local self-government in Ukraine”, executive bodies of councils are bodies that, in accordance with the Constitution of Ukraine and this Law, are created by village, town, city, district councils in cities (if they are created) to exercise executive functions and powers of local self-government within the limits defined by this and other laws [3].

Art. 11 of the Law of Ukraine “On local self-government in Ukraine” states that the executive bodies of the city, district councils in cities (in the case of their creation) are their executive committees, departments, and other executive bodies created by councils, which are controlled and accountable to the relevant councils, and on the implementation of delegated powers of executive authorities – also controlled by the relevant executive authorities.

According to Art. 5 of the Law of Ukraine “On local self-government in Ukraine”, district councils in the city create their own executive bodies. The deputies of the district council in the city elect the head of this council from among their members, governing both the relevant council and its executive committee.

The position of the Constitutional Court of Ukraine regarding the status of the mayor is set out in a number of decisions. Generally, it consists in the fact that the mayor is the main official of the territorial community of the city (part 1 of Art. 12 of the Law of Ukraine “On local self-government in Ukraine”) with a representative mandate. The presence of a representative mandate of the mayor is primarily due to their direct election by the territorial community of the city. The mayor, as a person who has a representative mandate, acts on behalf of voters, in particular, represents the territorial community, the city council, and its executive committee in relations with state bodies, other local self-government bodies, associations of citizens, etc.; applies to the court on the recognition of illegal acts of the relevant local self-government bodies, local executive authorities, enterprises, institutions, and organisations that restrict the rights and interests of the territorial community, and the powers of the council and its bodies; concludes contracts on behalf of the territorial community, the city council and its executive committee in accordance with the legislation (part 3 of Art. 42 of the Law of Ukraine “On local self-government in Ukraine”). These functions and powers are fulfilled because the voters have chosen them and given them a mandate (i.e., an assignment). The mayor is the main official of the relevant territorial community of the city (Art. 12, parts 3, 4, 5, 6 of Art. 42 of the Law of Ukraine “On local self-government in Ukraine” in the context of Art. 141 of the Constitution of Ukraine) [4].

According to Art. 192 of the Electoral Code of Ukraine, elections of the village, town, city (a city with a number of voters less than 75 thousand people) heads are held according to the majority electoral system of relative majority in a single-mandate village, town, city electoral district, which, accordingly, coincides with the territory of a village, town, city according to the administrative-territorial structure or the territory of a village, town, city territorial community. Elections of the city (a city with a number of voters of 75 thousand or more people) of the head are held according to the majority electoral system of an absolute majority in a single-mandate city electoral district, which coincides with the territory of the city according to the administrative-territorial structure or the territory of the city territorial community. The electoral system under which elections of deputies of the

city, village, settlement council and mayor are held is determined considering the number of voters who have the right to vote in the relevant local elections, as of the first day of the month preceding the month in which the electoral process begins with the corresponding local elections [5].

In the paper, N. Voitenko notes that the adopted electoral code of Ukraine has both positive aspects and certain shortcomings. Thus, it is positive that its provisions establish the right to vote in local elections for internally displaced persons, as opposed to previous laws on local elections, and the right to take part in elections of migrant workers due to a simplified procedure, which provides for the right to change the electoral address, which in turn corresponds to the general electoral right of Ukrainian citizens, which is enshrined in the Constitution of Ukraine and international treaties. Negative, according to the author, is that the provisions of the Electoral Code do not contain norms on the protection of the electoral right of people with disabilities, which contradicts the principle of equal conditions in the exercise of the electoral right by citizens of Ukraine. As the author notes, it is also important that there are certain conflicts in the provisions of the Electoral Code, which is the embodiment of the branching norms of electoral legislation that existed before the adoption of this code. Thus, in accordance with paragraph 5 of Art. 14, conscripts are granted leave to exercise their right to vote. Instead, paragraph 7 of Art. 7 of the Code deprives conscripts of the right to vote in local elections, describing such persons as those who do not belong to any territorial community, thus the legislator grants citizens of Ukraine, namely conscripts, limited voting rights [6].

The city of Kyiv, which has a special status, also has its own system of local government bodies. In the study, T. Kulyk defines a local state authority as an integral part of the unified state apparatus of Ukraine, which is a collective of citizens of Ukraine or one citizen of Ukraine who has a special status based on the procedure established by law to perform the tasks and functions of the state at the local level and is endowed for this purpose with appropriate state powers, which are implemented in legal and organisational forms defined by law. According to the current legislation, such bodies include: local state administrations, territorial bodies of ministries, and other central executive authorities [7].

Thus, in general, the regulatory and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that includes local state executive authorities, which on the one hand include local state administrations and territorial bodies of

central executive authorities, on the other – city heads, the city council and its executive body, which are local self-government bodies.

The most important aspect of the organisation and activity of local public authorities of cities in Ukraine is the result of such activities, the quality and effectiveness of their management decisions.

In particular, S. Haiduchenko states in the context of ensuring the necessary level of public management decisions in Ukraine, the aggravation of the problem of developing the corporate culture of public authorities in the following areas: internal corporate – formation of the necessary level of competence of employees and a positive microclimate in the public authority, the satisfaction of employees with material and technical support and the level of interaction with the management; external corporate – establishing a dialogue between the authority and society; harmonisation of corporate interests of public administration in society; adaptation to the Ukrainian realities of the foreign practice of corporatism; development of a general code (standard) of the corporate culture of public administration, in particular, in the information and communication field, etc. [8]. In addition, according to the author, at the current stage of decentralisation of power in Ukraine, the level of management decisions does not meet the challenges of the time regarding communication and coordination of actions of all participants in this process. The problem of forming regional development priorities is particularly critical [8].

Researcher A. Shynkovych, on the European practice of reorganising local self-government, notes that it is interesting, multidimensional, and instructive, including for modern Ukraine, which, while developing its model (system) of such governance, on the one hand, uses its own history and traditions of people's self-government, and, on the other hand, considers the best achievements of reorganising such self-government obtained by other, mainly European countries. Potentially, in addition to examples of decentralisation of power, implementation of administrative-territorial reforms, training systems for civil servants, etc., Ukraine actively takes part in the functioning of such Euroregions as the Association "Carpathian Euroregion", "Bug", "Lower Danube", "Upper Prut", "Dnipro", "Slobozhanshchyna". Thus, the implementation of the modernisation of local self-government in Ukraine takes place in the context of both national and international practices of such reform [9].

According to Ya. Ben, the application of the CLEAR methodology, which reflects the feedback between local self-government bodies and the territorial community, can be an effective management

mechanism for using the potential of participatory democracy during the implementation of local self-government reform in Ukraine, it is also noted that participatory democracy at the local level requires perfect mechanisms for its implementation for further reform of local self-government in Ukraine. Therewith, participatory democracy is not an alternative to constitutional forms of local democracy and cannot replace direct democracy (local elections and referendums) and the activities of representative local self-government bodies (local councils, village, town, city heads, prefects, etc.) in Ukraine. Participatory democracy completes the triad "direct democracy – representative democracy – participatory democracy" and strengthens the power of territorial communities, ensures the establishment and functioning of civil society institutions at the local level and interaction between residents and local self-government bodies in resolving issues of local significance, which is extremely important in the inter-electoral period [10].

## ■ Conclusions

Based on the conducted study, it can be concluded that:

1. In general, the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that includes local state executive authorities, which on the one hand include local state administrations and territorial bodies of central executive bodies, on the other – city heads, the city council and its executive body, which are local self-government bodies. Notably, local state administrations at the city level operate only in the cities of Kyiv and Sevastopol, and are also created in the districts of the corresponding cities.

2. The head of state has the main influence on the establishment of local state administrations since they appoint the relevant heads, who form their composition.

3. Territorial bodies of central executive authorities at the city level perform not citywide managerial functions, but specific functions of the state assigned to the relevant central body. In turn, local self-government bodies – the city council and its executive body, the mayor, who is the main official of the territorial community of the city, in accordance with Art. 140 of the Constitution of Ukraine and the Law of Ukraine "On local self-government in Ukraine" – are responsible for solving issues of local significance.

4. Ukraine, according to researchers, needs a decentralisation reform, which consists in reforming the city administration system, considering the successful experience of the EU countries.

## ■ References

- [1] Ben, Ya. (2019). Modernization of the mechanism of realization of democracy of participation in the conditions of reform of local self-government in Ukraine. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 2(4), 146-158. doi: 10.32689/2617-9660-2019-4-2-146-158.
- [2] Population in large cities of Ukraine on January 1, 2021. (n.d.). Retrieved from <https://index.minfin.com.ua/ua/reference/people/town/>.
- [3] Haiduchenko, S. (2021). Making responsible and timely management decisions by public authorities as a challenge of today. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 1(13), 202-2013. doi: 10.32689/2617-9660-2021-1(13)-202-213.
- [4] Constitution of Ukraine. No 254k/96-VR. (1996, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?find=1&text=%D0%B2%D0%B8%D0%BA%D0%BE%D0%BD#w1\\_67](https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?find=1&text=%D0%B2%D0%B8%D0%BA%D0%BE%D0%BD#w1_67).
- [5] Kulyk, T.O. (2016). *Constitutional principles of interaction between local state authorities and local self-government bodies in the city of Kyiv*. Kyiv: Alerta.
- [6] Decision of the Constitutional Court of Ukraine in the case on constitutional petitions of 49 people's deputies of Ukraine and the executive committee of Vinnytsia City Council on official interpretation of provisions of Articles 38, 78 of the Constitution of Ukraine, Articles 1, 10, 12, part two of Article 49 of the Law of Ukraine "On Local Self-Government in Ukraine" (case on combination of positions of the People's Deputy of Ukraine and the mayor). No. 7-рп/1999. Case No. 1-25/99. (1999, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/v007p710-99#Text>.
- [7] Shynkovych, A. (2020). European integration vector of formation of modern systems of local self-government. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 1(7), 266-273. doi: 10.32689/2617-9660-2020-1(7)-268-273.
- [8] Voitenko, N. (2019). Regulatory and legal consolidation and implementation of citizens' voting rights in local elections. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 4(6), 139-149. doi: 10.32689/2617-9660-2019-4(6)-139-149.
- [9] Electoral Code of Ukraine. No. 396-IX. (2019, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/396-20#Text>.
- [10] Law of Ukraine "On local self-government in Ukraine". No. 280/97-VR. (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

## ■ Список використаних джерел

- [1] Бень Я. Модернізація механізму реалізації демократії участі в умовах реформи місцевого самоврядування в Україні. *Експерт: парадигми юридичних наук і державного управління*. 2019. Вип. 2. № 4. С. 146–158. doi: 10.32689/2617-9660-2019-4-2-146-158.
- [2] Чисельність населення по великих містах України на 1 січ. 2021 р. URL: <https://index.minfin.com.ua/ua/reference/people/town/>.
- [3] Гайдученко С. Прийняття відповідальних і своєчасних управлінських рішень органами публічної влади як виклик сучасності. *Експерт: парадигми юридичних наук і державного управління*. 2021. Вип. 1. № 13. С. 202–2013. doi: 10.32689/2617-9660-2021-1(13)-202-213.
- [4] Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: [https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80?find=1&text=%D0%B2%D0%B8%D0%BA%D0%BE%D0%BD#w1\\_67](https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80?find=1&text=%D0%B2%D0%B8%D0%BA%D0%BE%D0%BD#w1_67).
- [5] Кулик Т. О. Конституційні засади взаємодії місцевих органів державної влади та органів місцевого самоврядування в місті Києві: монографія. Київ: Алєрта, 2016. 198 с.
- [6] Рішення Конституційного Суду України у справі за конституційними поданнями 49 народних депутатів України і виконавчого комітету Вінницької міської ради щодо офіційного тлумачення положень статей 38, 78 Конституції України, статей 1, 10, 12, частини другої статті 49 Закону України «Про місцеве самоврядування в Україні» (справа про сумісництво посад народного депутата України і міського голови) від 6 липня 1999 року № 7-рп/1999. Справа № 1-25/99. URL: <https://zakon.rada.gov.ua/laws/show/v007p710-99#Text>.
- [7] Шинькович А. Євроінтеграційний вектор формування сучасних систем місцевого самоврядування. *Експерт: парадигми юридичних наук і державного управління*. 2020. Вип. 1. № 7. С. 266–273. doi: 10.32689/2617-9660-2020-1(7)-268-273.

- [8] Войтенко Н. Нормативно-правове закріплення та реалізація виборчих прав громадян на місцевих виборах. *Експерт: парадигми юридичних наук і державного управління*. 2019. Вип. 4. № 6. С. 139–149. doi: 10.32689/2617-9660-2019-4(6)-139-149.
- [9] Виборчий кодекс України: Закон України від 19 груд. 2019 р. № 396-IX. URL: <https://zakon.rada.gov.ua/laws/show/396-20#Text>.
- [10] Про місцеве самоврядування в Україні: Закону України від 21 трав. 1997 р. № 280/97-ВР. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

## Конституційно-правова регламентація організації та діяльності органів публічної влади міст в Україні

Дарина Ігорівна Радомська

Національна академія внутрішніх справ  
03035, Солом'янська площа, 1, м. Київ, Україна

■ **Анотація.** Метою статті є здійснення аналізу конституційно-правової регламентації організації та діяльності органів публічної влади міст в Україні. Для її досягнення було окреслено такі завдання: з'ясувати конституційні засади формування органів публічної влади міст; виокремити коло відповідних органів; з'ясувати конституційно-правовий статус органів публічного управління міст в Україні. Методологічною основою дослідження стала сукупність загальнонаукових і спеціальних методів, прийомів і засобів наукового пізнання, їх комплексне застосування, спрямоване на досягнення мети та виконання завдань дослідження. Конституційно-правова регламентація організації та діяльності органів місцевої публічної влади міст в Україні є об'єктом тривалих наукових пошуків, які як результат мають різноманітні пропозиції щодо реформування зазначеної системи управління. Вибір методологічного інструментарію має забезпечити системне вивчення сучасних тенденцій удосконалення конституційно-правової регламентації організації та діяльності органів місцевої публічної влади міст в Україні. Застосування принципу системності сприяє здійсненню дослідження інституційного механізму реалізації місцевої публічної влади в містах. Метод конституційного моделювання дав змогу напрацювати пропозиції та рекомендації з удосконалення конституційно-правового регулювання організації та діяльності органів місцевої публічної влади міст в Україні. Наукова новизна полягає у формуванні теоретико-методологічних засад удосконалення конституційно-правової регламентації організації та діяльності органів місцевої публічної влади міст в Україні та обґрунтуванні пропозицій практичного спрямування щодо оптимізації системи органів місцевої публічної влади міст в Україні. Загалом конституційно-правова регламентація організації та діяльності органів місцевої публічної влади міст в Україні створює дуалістичну систему, що охоплює місцеві органи державної виконавчої влади, які, з одного боку, включають місцеві державні адміністрації та територіальні органи центральних органів виконавчої влади, з іншого – міських голів, міську раду та її виконавчий орган, що є органами місцевого самоврядування. Слід зазначити, що місцеві державні адміністрації на міському рівні функціонують лише в містах Києві та Севастополі, а також їх створюють у районах відповідних міст. Основний вплив на формування місцевих державних адміністрацій має голова держави, оскільки саме він призначає відповідних голів, які й формують їх склад. Територіальні органи центральних органів виконавчої влади на рівні міст виконують не загальноміські управлінські функції, а конкретні функції держави, що покладені на відповідний центральний орган. А ось органи місцевого самоврядування – міська рада та її виконавчий орган, міський голова, що є головною посадовою особою територіальної громади міста, відповідно до ст. 140 Конституції України та Закону України «Про місцеве самоврядування в Україні», – відповідають за вирішення питань місцевого значення. Водночас Україна, на думку вчених, потребує реформи щодо децентралізації, що полягає в реформуванні системи міського управління, з огляду на вдалий досвід країн ЄСв

■ **Ключові слова:** місцева публічна влада в Україні; місцеве самоврядування; органи місцевої публічної влади міст в Україні; місцеві державні адміністрації; органи місцевого самоврядування