

Problems of Regulatory and Legal Support of Polygraph Application in Ukraine

Yurii Irkha[†], Oleksii Butenko^{††}, Mykola Pogrebytskyi^{†††}, Oleksandr Manzhai^{††††},
Serhii Krushynskyi^{†††††}

[†] Department of the State Research, Institute of the Ministry of Internal Affairs of Ukraine, Ukraine

^{††} Doctorant, National Academy of the Security Service of Ukraine, Ukraine

^{†††} Department of counterintelligence defense of critical infrastructure, National Academy of Security Service of Ukraine, Ukraine

^{††††} Department of Countering Cybercrime, Kharkiv National University of Internal Affairs, Ukraine

^{†††††} Criminal law and procedure department, Leonid Yuzkov Khmelnytskyi university of management and law, Ukraine

Summary

The article is devoted to the study of the problems of polygraphic research to obtain forensically significant information. An analysis of the legal basis for the use of the polygraph in Ukraine. Problematic issues concerning the appropriateness of using a polygraph in the investigation and detection of crimes have been studied. The domestic legal norms that regulate this issue, as well as foreign experience are analyzed. The article reveals the essence of the polygraph, the legal basis and requirements for its use. Attention is drawn to the main difficulties of using a polygraph and ways to solve them.

Key words:

polygraph application, polygraph survey, lie detector, hidden information, polygraph specialist, application trends.

1. Introduction

Changes in technological progress are inevitable without the use of new technologies. Modern science and technology make it possible to improve and introduce new means of production. The use of a polygraph is an effective means of obtaining information at the present stage of development of society. The issue of using a polygraph by law enforcement agencies is one of the urgent problems of criminal procedure.

Today, in many foreign countries, the use of polygraphs in criminal proceedings is a common effective practice that allows you to check a person's emotional reactions to certain verbal or graphic stimuli and on this basis to draw conclusions about the likelihood of concealing certain information about criminal offenses. information or, conversely, to confirm the veracity of the testimony. In Ukraine, there is no consensus among scholars and practitioners on the appropriateness and admissibility of the use of polygraphs at the stage of pre-trial investigation. The normative and legal regulation of the procedural

grounds and the procedure for conducting polygraphic inspections is also insufficient. Accordingly, there are different ways of applying the law in judicial practice, which determines the relevance of research in this area.

Scientists such as R.S. Belkin, O.V. Belyushina, Yu. K. Orlov, G.K. Kravtsova, Ya. V. Komissarova, T. Morozova, O.I. Motlyakh, Zh. Yu. Polovnikov, M.A. Selivanov, O.P. Soshnikov, Yu. I. Kholodny and other scientists.

2. Theoretical Consideration

In today's world there is a tendency to appear quite sophisticated and creative ways of committing criminal offenses, and therefore requires the search for new ideas, tools and developments that would assist law enforcement and justice in their practice, in detecting, investigating, preventing and combating criminal encroachment. According to official data, the polygraph is used in most countries. In some countries, whether or not there is a practice of using polygraph surveys, the feasibility of such research is being actively discussed. Due to significant contradictions between supporters and opponents of the polygraph, the scope of its use remains unchanged (polygraph examination in the detection and investigation of crimes, forensic examination of the veracity of testimonies, personnel screening of employees and candidates for vacant positions, and official inspections in the field of national security) [2]. As you know, a polygraph is a multi-purpose device designed to simultaneously record several physiological processes associated with the emergence of emotions. Polygraph is a set of accurate medical devices that continuously and synchronously record the dynamics of a number of reactions of the respondent: blood pressure, pulse rate, depth and respiration rate, skin-galvanic response, muscle tension, brain biocurrents, etc. [3]. Conducting polygraph surveys (tests) does not contradict the current legislation of

Ukraine and does not violate the constitutional rights of citizens, as this type of survey is carried out only with their written consent and simultaneous registration of changes in psychophysiological reactions in response to psychological stimuli. schemes, photos, etc.

Such a survey uses a method that does not harm life, human health and the environment. The argument that justifies the use of a polygraph in criminal proceedings is the speed of processing and analysis of information obtained by a polygraph expert, as well as the objectivity of the result of psychophysiological research using a polygraph, which is difficult to obtain traditional methods. In addition, the use of a polygraph provides additional information that is directly related to the direction or object of investigation, accelerates its course, provides a quick, complete and objective assessment of the accuracy of the reported information, helps to detect crimes being prepared [4]. Certain subjects and for a specific purpose have the opportunity to conduct polygraph research only at the level of departmental legal support, which defines a polygraph survey as a measure of psychophysiological testing of a person in respect of whom information about his possible involvement in illegal activities. technical means and appropriate methods [5]. As of today, domestic psychophysiological research with the use of the polygraph forms two directions: the use of the polygraph in personnel work and the use of the polygraph in law enforcement. The question arises as to the full implementation of the results of polygraph research of psychophysiological reactions in the criminal process as one of the sources of evidence. Most of the problems arose due to the lack of regulations that would define a polygraph as a technical device for recording, analysis and evaluation of psychophysiological reactions of the interviewee, which served as a basis for some law enforcement officers and the court. In this regard, the legal literature also expresses polar views, with which within the current legal field it is difficult to unambiguously agree. Thus, some scholars, studying the problem of legal regulation of the use of polygraphs, argue that testing with this technical device allows not only to determine the most promising areas of investigation in criminal proceedings, but also to build an active position of the defense.

In addition, they will be able to provide additional information that is directly or indirectly related to the investigation in criminal proceedings and provides an opportunity to quickly assess the accuracy of the information and conduct a quality pre-trial investigation within the time limit established by criminal procedure law. According to other researchers, the information obtained from polyphysiological research using a polygraph is indirect evidence and confirms only the subjective significance of specific incentives that may indicate the

presence of hidden information about the circumstances of the crime or the truthfulness of answers to questions. However, such a scientific position is not consistent with the requirements of the current CPC of Ukraine [1]. In Ukraine, the use of a polygraph is not explicitly prohibited by law. Nor are the constitutional rights of citizens violated, as inspections are carried out only with their written consent. The basis for the application of polygraph surveys directly by police officers is Art. 8 of the Law of Ukraine "On operational and investigative activities" [6], which enshrines the right of units engaged in operational and investigative activities to interview persons with their consent (paragraph 1, part 1, Article 8). According to this article, the use of a polygraph is a kind of survey, but the information obtained in this way can not be accepted by the courts as evidence in the case, they are only guidelines for collecting factual data on a person's involvement in a crime [7]. There is another problem - the admissibility of refusing to answer certain survey questions. After all, the Constitution of Ukraine (Article 63) allows a person not to disclose information of a personal nature, including information about a crime committed by him. It was also noted that the draft laws not only do not specify the procedure for ensuring the confidentiality of information received by a polygraph examiner, but also do not specify the level and procedure of responsibility for its disclosure. In addition, the responsibility for the loss of the polygraph examiner, forgery, distortion, etc. is not defined [8].

The possibility of using a polygraph is also provided in Articles 71 and 107 of the CPC of Ukraine, but there is no detailed regulation of the process of polygraph examination. The provisions of these articles concern only the procedure for the participation of a specialist in the conduct of investigative (search) actions and the possibility of using technical means to collect, record and use information [9]. Practically or not the only legal basis on which the process of using a polygraph in domestic criminal proceedings was based, were departmental bylaws, namely: Order of the Ministry of Internal Affairs of Ukraine "On conducting an experiment on the use of computer polygraphs in law enforcement" from 28 August 2001 № 743 [10], in which the polygraph was introduced into the sphere of activity of law enforcement bodies of Ukraine with elimination of limited possibilities of application of this device in operative-search activity. And on its basis the Concept on introduction of computer technologies with use of the polygraph in system of the Ministry of Internal Affairs of Ukraine with the program of its realization is developed. As an experiment, this departmental bylaw showed its positive results, which became the basis for the adoption of another order in the Ministry of Internal Affairs of Ukraine "On further development of psychological support of operational and service activities of internal affairs of Ukraine", registered

in the Ministry of Justice of Ukraine October 27, 2004 № 1365 / 9964) of July 28, 2004 № 842 [11]. Based on this, the "Instruction on the use of polygraphs in the police" (computerized devices for recording psychophysiological human reactions) for № 1373/9972 [12] was developed, which significantly expanded the possibilities of using a polygraph in criminal proceedings in Ukraine. However, after the approval of the decision of the Board of the Ministry of Internal Affairs of Ukraine of July 25, 2008 № 17km / 1 "Programs for combating crimes against life and health against the person for 2008-2012." [13], which provided for the systematic use of the polygraph and the results obtained by it in the work of law enforcement agencies aimed at effective detection of crimes against human life and health, this process was slowed down due to the political situation in the country. The need to combat crime in Ukraine demonstrates the importance of intensifying further developments in the direction of the introduction of the polygraph in the activities of the National Police as a complex issue for personnel work and law enforcement. Comprehensive application of the polygraph and its results requires both criminal proceedings aimed at effective and timely investigation of criminal offenses, and personnel inspection or personnel "screening".

It is advisable to use a polygraph during certain (investigative) actions, including: interrogation, presentation for identification, investigative experiment, etc. The polygraph makes it possible to objectively reflect the subjective significance of a fact of reality for the person being examined. As for the expert polygraph examiner involved in the polygraph examination, he primarily provides probable information about changes in the psychological state of the respondent, and is able to provide assistance as a technical executor of obtaining "perfect reflection traces" for further expert research [14]. In this way, the possibility of further reproduction of the obtained "ideal traces of reflection" is used already during the forensic psychological examination, which requires the involvement of an expert to interpret the content. Thus, if there are grounds, the polygraph examiner can acquire the status of an expert, but already in the process of pre-trial investigation. It should also be noted that a polygraph interview will not provide reliable information about an insane person, or if the suspect suffers from a mental disorder, was intoxicated or under the influence of drugs at the time of the crime, in a state of strong emotional arousal (strong emotional excitement, affect, frustration), etc., because in these cases he may simply not remember all the circumstances of the crime [15]. Thus, based on the study, it can be argued that the use of the polygraph in the activities of the National Police is regulated by separate regulations, orders and departmental instructions, but the practice of its application indicates the need for a separate

law that will allow full use of the polygraph. with its help results in domestic law enforcement practice, in particular in criminal proceedings.

Conclusions

Summarizing the above, we can conclude that the use of data obtained using a polygraph in evidence, including in Ukraine, is quite acceptable, but this should be preceded by a deep and comprehensive scientific study of the device. It is extremely important to clearly define the type of procedural measure (action) in which the polygraph can be used. The ineffectiveness of some traditional methods of obtaining verbal forensic information indicates the need to increase the means of overcoming the fight against the investigation of crimes in the field of official activities by using radically new and unusual, unconventional methods of obtaining this information. Of all the arsenals of such tools developed in the theory and practice of criminology, one of the most successful and effective is the study using a computer polygraph. Despite the obvious and undeniable advantages of its use in pre-trial investigation, there are also a number of legal and organizational problems that hinder the process of its legalization at the level of the CPC of Ukraine, and thus implementation in law enforcement agencies. It seems more appropriate to define polygraph testing as a type of forensic examination (psychophysiological examination), and it should have the same value of the source of evidence as the conclusions of other experts, have no prerogative over other sources of evidence and should be evaluated by the court only in conjunction with others. Doubts about the correctness of the conclusion of such an examination may be questioned on the same grounds as the conclusions of others, including psychological, psychiatric examinations, so we should not emphasize their indicative value. However, for the full use of the polygraph to obtain evidentiary information in criminal proceedings, it is necessary to regulate such actions. The fastest solution to these problems will allow you to effectively and fully use all the features of the polygraph.

References

- [1] I.V. Bassist, L.W. Maxims. The use of polygraph in Ukraine: some aspects. The use of the polygraph in law enforcement: problems and prospects: materials III International. scientific-practical conf. (Kyiv, November 7-8, 2015). K. : Nat. acad. internal Affairs, 2015. pp. 50–54.
- [2] The current state of the theory and practice of polygraph surveys. URL: http://www.santodor.com.ua/services3_7.php/.
- [3] Polygraph as a non-traditional forensic tool and the possibility of its use in criminal evidence.

- Current issues of criminology. Donetsk, 2001. pp. 92–100.
- [4] Saltevsky M.V. Forensics (in modern terms): textbook. pocib. K. : Condor, 2005. 588 p.
- [5] On the further development of the service of psychological support of operational and service activities of the bodies of internal affairs of Ukraine: Order of the Ministry of Internal Affairs of Ukraine of July 28. 2004. № 842. K., 2004. 90 p.
- [6] On operative-search activity: Law of Ukraine of February 18, 1992 № 2136-XII. Information of the Verkhovna Rada of Ukraine. 1992. № 22. Art. 303.
- [7] Legal bases of polygraph application in Ukraine. URL: <http://www.nbuvip.gov.ua/>.
- [8] On the protection of the rights of persons undergoing surveys (research) on the polygraph: Draft Law of 17.02.2016 № 4094. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58326.
- [9] Criminal Procedure Code of Ukraine [text]. K. : "Center for Educational Literature", 2012. 254 p.
- [10] On conducting an experiment on the use of computer polygraphs in the activities of internal affairs bodies of Ukraine: Order of the Ministry of Internal Affairs of Ukraine of August 28. 2001 № 743 / The Verkhovna Rada of Ukraine. URL: <http://zakon4.rada.gov.ua/laws/main>.
- [11] On the further development of the service of psychological support of operational and service activities of the bodies of internal affairs of Ukraine: Order of the Ministry of Internal Affairs of Ukraine of July 28. 2004 p. № 842 / The Verkhovna Rada of Ukraine. URL: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z1365-04>.
- [12] On the procedure for using polygraphs (computerized devices for recording psychophysiological human reactions) in the activities of the police: Instruction of the Ministry of Internal Affairs of Ukraine of October 27, 2004 № 1373/9972 / Verkhovna Rada of Ukraine. URL: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z1373-04>.
- [13] On announcing the decision of the board of the Ministry of Internal Affairs of Ukraine: order of the Ministry of Internal Affairs of Ukraine of July 31, 2008 № 370. Program of counteraction to crimes against life and health for 2008-2012 so far: 2008 p. № 17km / 1. URL: umdpl.info/files/docs/1288074253.doc.
- [14] Alexandrov D.O. Legal bases of psychophysiological research in the criminal process of Ukraine / Д.О. Александров, I.M. Okhrimenko. Special equipment in law enforcement: materials IV International. scientific-practical conf. (Kyiv, November 26-27, 2009). K. : Kyiv. nat. University of Internal Affairs Affairs, 2009. P. 95–96.
- [15] V.Ya. Marchak, L.R. Shuvalskaya. Discussion problems of research and evaluation of the conclusion of a complex forensic psychological and psychophysiological examination by a jury. The use of the polygraph in law enforcement: problems and prospects: materials III International. scientific-practical conf. (Kyiv, November 7-8, 2015). K. : Nat. acad. internal Affairs, 2015. pp. 24–29.