

Use Of Scientific And Technical Means During Interrogation In Criminal Proceedings

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Summary

The article is devoted to the consideration of the peculiarities of the use of technical and forensic means during individual investigative actions. Types of specialist assistance during pre-trial investigation (forensic, advisory, methodical and technical) are distinguished. The regulation of the use of scientific and technical means during pre-trial investigation has been studied, clarifications have been proposed regarding the definition and classification of such means, and relevant recommendations have been provided for implementation in investigative practice. The article deals with the issues of classification of scientific and technical means used during pre-trial investigation. Taking into account the multifaceted and multipurpose nature of the classification of scientific and technical means used during pre-trial investigation and court proceedings, the author proposed his own approach to the specified classification.

Keywords:

scientific and technical means, suspect, evidence, verification and clarification of information, procedural action, specialist, special knowledge, procedural regulation

1. Introduction

Scientific and technical progress, which rapidly permeates all spheres of society's life, affects criminal proceedings both positively and negatively. The need to use scientific and technical means in criminal proceedings is determined not only by the desire of the participants of such proceedings to simplify and speed up the investigation process. Currently, the activity of investigating crimes has a rather low efficiency, which is contributed by many factors. One of the important factors is non-use (full or partial) of the possibility of applying special knowledge during the investigation in general and, in particular, during the conduct of individual investigative (search) actions. With the partial use of special knowledge, only the technical assistance of a specialist (photo, video recording, etc.) is used, and

the possibility of providing him with advisory and methodical assistance is completely eliminated.

The process of investigating any criminal offense is related to the need to investigate the circumstances of various spheres of social problems and life activities. In such situations, the professional knowledge of the investigator, his experience or awareness of certain issues that will require verification during the investigation may not be sufficient to provide a full and comprehensive analysis of the events, which, in turn, may negatively affect the criminal proceedings. According to Art. 2 of the Criminal Procedure Code of Ukraine, the tasks of criminal proceedings are to protect individuals, society and the state from criminal offenses, to protect the rights, freedoms and legitimate interests of participants in criminal proceedings, as well as to ensure a quick, complete and impartial investigation and trial [1]. The implementation of the main tasks of criminal proceedings takes place, including by using special knowledge and involving specialists in the investigation process.

A correct understanding of the concept of special knowledge in the criminal process is an important condition for their use in various forms by participants in criminal proceedings when investigating criminal offenses against public order in accordance with the requirements of the law.

Special knowledge is an element that determines the procedural and legal status of participants in criminal procedural activities. They affect the formation of their rights and obligations, the system of guarantees, conditions and procedure of activity in the process of investigation of criminal offenses, determine the characteristic procedural significance of the results achieved during such activity. Therefore, this question is not only purely academic, but also has significant practical significance.

The analysis of scientific literary sources allows us to conclude that in the science of the criminal process and in law enforcement practice, the same understanding of the role and place of technical means used during pre-trial investigation has not been formed. The work of many domestic and foreign scientists in the field of criminal procedure and criminology is devoted to the problems of using scientific and technical means to combat crime, in particular, the regulatory and legal regulation of the order and rules of their application in criminal proceedings, and the use of the obtained results, namely: R.S. Belkina, V.G. Honcharenko, I.V. Gory, A.V. Ishchenko, E.P. Ishchenko, V.A. Kolesnyka, V.K. Lysychenka, M.M. Lysova, O.V. Oderia, M.A. Pohoretskyi, T.A. Sedova, V.S. Kuzmichova, M.Ya. Segaya, V.V. Tyshchenko, M.E. Shumila, M.G. Shcherbakovsky and others.

2. Theoretical Consideration

In accordance with Part 1 of Art. 223 of the Criminal Procedure Code of Ukraine, investigative (search) actions are actions aimed at obtaining (collecting) evidence or checking already obtained evidence in a specific criminal proceeding. As noted by V. K. Veselskyi, in the collection of evidentiary information, one of the main places is occupied by interrogation. More than 80% of the time spent by an investigator on conducting investigative actions is spent on interrogations [2]. Interrogation is an investigative (research) action provided for by Art. 224 of the Criminal Procedure Code of Ukraine. In accordance with Part 5 of Art. 224 of the Criminal Procedure Code of Ukraine, photography, audio and/or video recording may be used during interrogation. Of the listed methods of fixation, the most optimal is fixation with the help of scientific and technical means of video fixation. That is why the practice is based on the first questioning of a suspect in the commission of a crime, necessarily with the use of scientific and technical means of video recording. The first interrogation of the suspect should be the most complete and qualitative, because usually on the first day after the arrest, the suspect is ready to provide all the information.

With the development of scientific and technical progress, the possibilities of forensic techniques and methods of their application in the detection and investigation of crimes are increasing. It should be taken into account that the achievements of scientific and

technical progress are also available to the criminal environment.

The criteria for legal regulation of the use of forensic means for the purpose of collecting and examining evidence in criminal proceedings should include:

- legality;
- admissibility;
- scientific validity;
- procedural guarantees against illegal use;
- the compliance of the use of forensic means with the status of the participants in criminal proceedings and their powers;
- an indication of the purpose and conditions, and if necessary, the order of application of these means in the relevant procedural documents, in which the obtained results are recorded;
- proper evaluation of the results of their application by the subject of proof.

Accordingly, the use of technical and forensic means in the fight against crime in a state governed by the rule of law must necessarily be legal.

The legality of the use of forensic techniques is characterized by a set of features, in particular:

- the presence of legal grounds;
- the use of means only by persons specified by law;
- compliance with the procedural form and order of application;
- registration of results in accordance with the requirements of regulatory acts.

The use of technical means in the criminal process is a common phenomenon, and the achievement of scientific and technical progress provides opportunities for the use of new technologies in the interests of criminal justice. The Criminal Procedure Code of Ukraine, with the help of modern technical means and systems, has significantly expanded the possibilities of conducting procedural actions during pre-trial investigation and court proceedings, in particular, the use of video recording (video conference mode). At the same time, the level of application of the achievements of science and technology is characterized by a significant gap between theory and practice, the lack of research into the problems of comprehensive scientific and technical support of criminal justice. With the development of scientific and technical progress, the possibilities of forensic (scientific and technical) means and methods in the detection and investigation of criminal offenses are increasing [3]. To them P.V. Cymbal includes all developments in science and technology that contribute to increasing the level and

quality of detection, recording, research and use of data obtained with their help in criminal proceedings, i.e. technical means, methods, materials, techniques, methods, methods of organizing activities, etc. [4].

The purpose of the criminal process is not only to protect the rights and legitimate interests of victims of criminal offenses, to protect a person from illegal and unfounded accusations, convictions, restrictions on his rights and freedoms, but also to achieve this goal by legal means. Otherwise, the meaning of the entire criminal justice procedure is lost. This provision is enshrined not only in Art. 62 of the Constitution of Ukraine, according to which the accusation cannot be based on evidence obtained illegally and assumptions [5], and in Art. 87 of the Criminal Procedure Code of Ukraine, which establishes the requirement that evidence obtained in violation of the requirements of the Criminal Procedure Code of Ukraine is inadmissible. That is, in order to become evidence, the results of investigative (search) actions in video conference mode must, firstly, be conducted in a legal manner, and secondly, be recorded using technical means of video recording. The video recording, in turn, must acquire the status of evidence, which is established in the procedural legislation of Ukraine. At the same time, it is necessary for it to be properly designed, which makes it necessary to consider the technical means of video recording, with the help of which the procedural actions carried out in the mode of a video conference in this area are recorded. Yes, Art. 84 of the Criminal Procedure Code of Ukraine establishes that the procedural sources of evidence are testimony, tangible evidence, documents, expert opinions. Additionally, in Art. 99 of the Criminal Procedure Code of Ukraine stipulates that a document is a material object specially created for the purpose of preserving information, which contains information recorded with the help of written signs, sound, image, etc., which can be used as evidence of a fact or circumstance established during criminal proceedings. Documents may include protocols of procedural actions and their appendices drawn up in accordance with the procedure provided for in the Criminal Procedure Code, as well as information carriers on which procedural actions are recorded using technical means, photographic, sound, video recording materials, and other information carriers (including electronic) [7]. That is, the legislator gives the video recording the status of a document in the criminal process. Note that in this case it is necessary to evaluate the information itself, and not the material object on which it is recorded.

High-quality conducting of investigative actions is impossible without the use of certain technical means by both the person conducting the investigation and the specialist involved. Analysis of the norms of the current Criminal Procedure Code of Ukraine makes it possible to assert that special knowledge during criminal proceedings can be used in the form of advisory and technical assistance. Yes, Art. 71 of the Criminal Procedure Code of Ukraine, defining a "specialist", establishes that this is a person who possesses special knowledge and skills in the use of technical or other means and can provide advice during pre-trial investigation and court proceedings on matters requiring relevant special knowledge and skills (Part 1 of Article 71 of the Criminal Procedure Code of Ukraine). A specialist may be engaged to provide direct technical assistance (photographing, drawing up schemes, plans, drawings, selection of samples for examination, etc.) by the parties to criminal proceedings during the pre-trial investigation and by the court during the trial (Part 2 of Article 71 of the Code of Criminal Procedure of Ukraine). To perform the specified task, the specialist is given the right to use technical means, devices and special equipment (Part 4 of Article 71 of the Criminal Procedure Code of Ukraine) [1].

Involvement of specialists in investigative (search) activities is one of the most common forms of using special knowledge during an investigation. The participation of a specialist in the conduct of investigative (search) actions from the point of view of compliance with the norms of the criminal procedural law can be: mandatory due to the direct instructions of the law; situationally recommended by law or optional (the participation of a specialist is not stipulated by law, but is possible and determined by the investigator's decision based on the specifics of the investigative situation and the need to use special knowledge to establish specific circumstances) [7].

In contrast to the concept of "specialist", the scientific category "special knowledge" is not fixed by law, but the study of the practice of applying special knowledge allows us to come to the conclusion that special knowledge means a system of not generally known, not generally available, scientifically based and practically tested knowledge of a theoretical and applied nature in the field of science, techniques, arts and crafts, obtained as a result of special training, advanced training, self-education, scientific activity, experience of practical work in a specialty, which do not constitute professional knowledge of the subject of proof and are used for the

purpose of obtaining evidentiary and orientational information necessary for establishing the truth during the investigation [8].

Scientific and technical means were proposed to be classified according to their capabilities and purposes of application; by the types of results obtained with their help; differentiation of subjects of application of scientific and technical means according to their procedural position and possibilities of their use, etc. However, the issue of classification still remains relevant, because only by systematizing the variety of scientific and technical means from the perspective of admissibility of their use in criminal proceedings, it is possible to determine the tasks and possibilities of their application. P.S. Elkind distinguishes the following groups of scientific and technical means:

- 1) which have the form of criminal court evidence;
- 2) which are used to draw up criminal procedural acts;
- 3) which are used during investigative and judicial actions for the purpose of identifying, consolidating, checking and researching forensic evidence [9].

I.V. Treasurer draws attention to the fact that scientific and technical means can be:

- 1) material evidence, for example, the on-board recorder of the vehicle; video recorder (vehicle, ATM, automated system); a system for recording subscriber connections on the Internet or other types of telecommunications; environmental control and monitoring system, etc.;
- 2) means used for the purposes of ensuring compliance with the procedural form of proceedings in a criminal case;
- 3) means used during investigative and judicial proceedings to collect and verify evidence, for example, a fax machine, technical means of communication used for the purpose of monitoring and recording negotiations, a video conference system, etc [13].

In his research, the author offers his own classification of scientific and technical means by the range of subjects that use and apply technical means of communication in criminal proceedings: (1) participants in criminal proceedings who use technical means of communication during proceedings in criminal cases: a) subjects objects of the procedure for collecting and checking evidence that use technical means of communication: participants in criminal proceedings from the prosecution, participants in criminal proceedings from the defense, the court; b) a specialist who is engaged to use technical means of

communication; (2) persons whose authority to use technical means of communication is not regulated by legal regulations.

V.O. Rodivilina offers the following classification of scientific and technical means: (1) according to the degree of mandatory use of technical means: a) mandatory (when the use of technical means replaces the participation of witnesses, for example, in the inspection of the scene of the event, the production of which is associated with danger to life and people's health); b) optional (when the use of technical means during the investigative action is optional, for example, the use of a polygraph during interrogation); (2) according to the purposes of use: a) means of recording the material situation (for the purpose of preserving physical evidence and their probative properties, as well as to ensure the possibility of providing them at any time of proof); b) means of collecting evidence (for finding and identifying material objects that are important for the case, for the purpose of their further use in the process of proof; photocopying of documents during seizure, search); c) means of verification and assessment of evidence (for preliminary and subsequent research); d) for presentation to the participants of the process (for example, demonstration of the recording of the interrogation, familiarization of the victim and the accused with the materials of the criminal case, etc.); e) means of obtaining indicative information (for example, a polygraph); e) means of providing audio and video communication (contact) in real time (for example, using video conference communication systems); (2) according to the features of the procedural form of conducting the investigative action, technical means can be divided into those that are used: a) with the mandatory participation of a specialist (use of a polygraph for the purpose of checking the reliability of information provided by a person), without his participation or with his participation on discretion of the investigator (inquirer); b) by a person of the same sex with other participants (survey, personal search) and any other persons in accordance with the procedure prescribed by law; c) by court order (control and recording of negotiations, obtaining information about the connection between subscribers and (or) subscriber devices) and without a court order.

The involvement of polygraph specialists during the investigation deserves special attention. In this regard, we absolutely agree with the position of L.D. Udalova, that traditional methods of identifying the subject's information status and exposing untruths may not

always be effective. The available arsenal of forensic means and techniques for exposing the guilty is limited to a certain extent, and the limits of their application are mostly determined by the amount of evidence collected in the case and the possibilities of their use during investigative actions [10].

A polygraph is a type of psychophysiological equipment and is a complex multi-channel hardware method of recording changes in a person's psychophysiological reactions in response to the presentation of certain psychological stimuli according to a special scheme [11-12].

Currently, there are two forms of using polygraph research. The first is the involvement of a polygraph specialist during the interrogation of a person to obtain forensically oriented information (where the result is a psychophysiological interview, designed in a form similar to a specialist's certificate); the second – conducting a full-fledged expert study in the form of a forensic psychophysiological examination (Forensic Psychophysiological Examination) as an independent type of examination with expert conclusions that can act as a full-fledged evidentiary court [14-15].

Therefore, scientific and technical means used in modern pre-trial investigation should be understood as a system of general technical, adapted and specially developed information technologies, as well as devices, apparatus, equipment, tools, devices, materials and methods of their application in order to ensure the most effective conducting a pre-trial investigation.

Conclusions

Updating theoretical ideas about the concept and classification of scientific and technical means used in the investigation of crimes, on the one hand, indicates the need for further deeper scientific research of new classification groups of these means in their relationship with traditional ones. This is important for enriching legal theory with new knowledge. On the other hand, it is also important for practice, as it contributes to the formation of the same understanding among lawyers, investigators, prosecutors, and judges of the essence of the norms governing the use of these means in the investigation, which is a guarantee of avoiding their conflicts in criminal proceedings.

Thus, we can conclude that the institution of the use of special knowledge is an important tool of the investigator to ensure a comprehensive, impartial, complete and quick investigation of criminal offenses,

including the facts of the commission of crimes by organized criminal groups and criminal organizations. The need to use special knowledge during interrogation is due to the fact that the knowledge of the event of a crime is a complex process of objective reality and requires the investigator to use a wide range of social, natural, technical knowledge, etc. Taking into account the rather high level of organization of persons who are part of criminal groups and organizations, it becomes clear that the resolution of legal issues regarding the legalization of the possibility of full use of the polygraph during interrogation will provide investigators with radically new means and opportunities for obtaining verbal information, as well as modern verification methods.

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