

DOI: <https://doi.org/10.32353/acfs.7.2023.05>
UDC 343.98

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Video Recording As Evidence Of Violent Crimes In A Criminal Proceeding And Its Negative Impact On The Judge During Its Investigation In Trial

Abstract. *The article is devoted to the analysis of the phenomenon of violent crimes, including the examination of the statistics of such crimes committed in Ukraine during 2022, which make up more than half of the criminal cases sent to court. At the same time, during consideration of a criminal case involving a violent crime, the prosecution almost always presents evidence in the form of video materials, which are directly examined by the judge during the trial and undoubtedly have a negative impact on all participants of a criminal case, including judges. Considering the relevance of studying such an impact, the author performed an analysis of video recordings as evidence of committing a violent crime during examination of materials in trial. The paper is aimed to identify a negative influence of violence depicted in video materials on trial participants, particularly judges, which manifests itself in traumatic and prolonged traumatic stress. It eventually may lead to post-traumatic stress disorder. At the same time, measures to prevent and counteract such a stressful condition among judges are suggested.*

Key words: evidence, proof, video recording, video materials, documents, criminal procedure, traumatic stress, post-traumatic stress disorder.

Introduction. With the beginning of society's large-scale digitization, portable video recorders have become accessible to an average citizen, and recording various events has become commonplace for us. Therefore, it is not surprising that video recordings are regularly included in materials of criminal proceedings as evidence of a person's commission of crime. Filming is also frequently used during procedural actions at the stage of pre-trial investigation as well as during performance of duties by patrol police officers, etc.

Despite different sources of origin, provided they meet the criteria of admissibility and adequacy outlined in Articles 85–86 of the Criminal Procedure Code of Ukraine¹, such video recorders can serve as evidence in a criminal proceeding and are subject to examination by the court during the trial.

It seems obvious that video recordings have significant advantages over other types of evidence. However, considering their visual nature and close proximity to a committed criminal offense, it is impossible to ignore the impact they have on individuals participating in court proceedings, especially on the court itself. This influence is most pronounced during the court's consideration of criminal cases involving acts of violence committed by a

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funder had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

¹ Кримінальний кодекс України: Закон України від 05 квіт. 2001 р. № 2341-III. Верховна рада України: URL: <https://zakon.rada.gov.ua/laws/show/2341-14/ed20230127>

Daria Barbash

VIDEO RECORDING AS EVIDENCE OF VIOLENT CRIMES IN A CRIMINAL PROCEEDING AND ITS NEGATIVE IMPACT ON THE JUDGE DURING ITS INVESTIGATION IN TRIAL

According to statistical data dated 2022, in Ukraine the majority of indictments sent to court involve signs of violent crimes. Therefore, judges working in general jurisdiction courts are almost daily confronted with case materials containing evidence of violence perpetrated by the accused against the victims. During examination of video recordings as evidence of violent crimes in trial, judges are directly exposed to witnessing such acts of violence, which in turn has a negative impact on their psychological state. This negative influence manifests itself in traumatic or prolonged traumatic stress, which can transform into post-traumatic stress disorder (PTSD).

Despite a considerable number of research papers devoted to the definition of violent crimes and the role of video recordings in the system of evidence in the current Criminal Procedure Code of Ukraine, it is necessary to admit that the legal literature does not sufficiently address the issue of the negative impact on judges of the examination of video evidence of violent crimes during court proceedings and the ways in which such impact manifests itself.

The Article Aim is to analyze the phenomenon of violent crime in Ukraine, the use of video recordings as evidence in criminal proceedings, negative effects endured by judges when examining

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person, where video recordings contain direct scenes of such violence, its consequences, or other evidence of its commission.

Analysis of publications where this problem solution is initiated. The research papers by Yu.M. Hroshevyi, O.V. Kaplina, L.M. Loboiko, V.I. Marynova, V. Pavliuk, T.S. Sokolan, S.M. Stakhivskyi and other researchers² are dedicated to analyzing video recording as evidence in criminal proceedings. At the same time, the issue of the influence of video recordings containing evidence of a person committing a violent crime on trial participants has not been sufficiently covered, which in turn has conditioned the need for scientific research.

Aim. The analysis of the use of a video recording as evidence in the system of domestic criminal procedural legislation and its examination by the court during consideration of criminal proceedings involving acts of violence is carried out. Due to this analysis, problematics of significant negative psychological impact of video materials on all trial participants, especially on judges who directly examine and evaluate such evidence in trial, has been revealed. In addition, efficient measures are provided to prevent and counteract stress states among judges.

Results and discussion. In compliance with provisions of Article 3 of the Law of Ukraine On the Judiciary and the Status of Judges, all courts of Ukraine shall form a single system, therefore proceedings shall be carried out according to the same principles, grounds and requirements. At the same time, provisions of Article 18 of the outlined law introduced specialization of courts in the domestic judicial system, based on which courts specialize in consideration of civil, criminal, economic, administrative cases as well as administrative offenses³.

In this way, despite the unity of the judicial system, different courts specializing in various areas may pose different challenges to a judge during his/her consideration of judicial cases. Thus, one of the unique aspects of criminal cases is that only during their consideration the judge comes into contact with evidence of overt manifestations of violence committed by an accused against a victim if such a crime had elements of violence.

In forensic science, there can be a lack of consensus concerning which crimes should be recognized as violent. Some scholars believe that only crimes directly aimed at a person should be considered violent (O. Humin, S. Yakymova). Others emphasize that it includes crimes where the main direct object is not only a person but also other objects (brigandage, extortion) (V. Tymoshenko). Some argue that the violent crime term should be replaced with aggressive crime as a broader term that encompasses offenses involving harm not only to persons but also to other



² Е. г., Грошевий Ю. М., Стахівський С. М. Докази і доказування у кримінальному процесі. Науково-практичний посібник. Київ: КНТ, Видавець Фурса С. Я., 2006. 272 с; Капліна О., Маринів В. Проблеми допустимості доказів, поданих відповідно до статті 66 КПК України особами із використанням технічних засобів отримання інформації. *Вісник Академії правових наук України*. 2011. №3. С.238-249; Лобойко Л. М. Аматорству в кримінальному провадженні про корупційні злочини не бути. *Юридичний вісник України*. 2015. №21 (1038); Соколан Т.С. Відеозапис як джерело доказів: нотатки до наукової дискусії. *Адміністративне право і процес*. 2013. № 3(5). С.140-148; Павлюк В. Значення матеріалів фотозйомки, звукозапису, відеозапису та інших носіїв інформації у кримінальному провадженні. *Національний юридичний журнал: теорія та практика*. 2014. № 2. С.90-94.

³ Про судоустрій і статус суддів: Закон України від 02 чер. 2016 р. №1402-VIII. Верховна рада України: URL: <https://zakon.rada.gov.ua/laws/show/1402-19>

objects (Ye. Hladkova, M. Tatsii). Others combine these types of crime with aggressive behavior and call it “aggressive-violent” (O. Lytvynov).

Therefore, violent crime is the range of intentional crimes committed by using, or threatening to use, physical or psychological violence against victims, resulting in death, bodily injuries or psychological harm to persons ⁴.

Given the diversity of opinions and classifications of violent crimes, we would like to focus on classification of violent crimes created by O. Khramtsov, under which such crimes are classified as:

1. Crimes against life and health, will, honor, and dignity, intentional killings: simple under aggravated or mitigating circumstances; incitement to suicide; intentional infliction of bodily harm of varying degrees of severity, including under mitigating circumstances; threat of murder; threat of destruction of property in a generally dangerous way; beatings and facial assault; torture; unlawful deprivation of liberty or kidnapping; hostage-taking; unlawful placement in a psychiatric institution.

2. Profit-motivated violent crimes: armed robbery; brigandage; extortion; banditry.

3. Violent crimes targeting the state, public safety, public order, and governance: terrorism; sabotage; attack on facilities posing increased danger to population; threat to commit kidnapping or use radioactive materials; malicious hooliganism.

4. Violent crimes against government authorities, other civil servants, and persons performing their professional duties: compulsion of a transport worker to misconduct; attempt on the life of a state or public figure; resistance to a representative of public authorities, law enforcement officer, member of a public security formation or state border guard/military service member; threat or violence against a law enforcement officer; threat or violence against a state or public figure; attempt on the life of a law enforcement officer, a member of a public order formation responsible for maintaining public order and state border protection, or a service member; threat or violence against a public official or citizen performing a public duty; threat or violence against a judge, lay judge, or juror; attempt on the life of a judge, lay judge, or juror in connection with their administering justice; actions that disrupt functioning of correctional facilities; threat or violence against a defender or representative of a person; attempt on the life of a defender or representative of a person in view of their activities related to providing legal assistance; certain military crimes involving the use of physical or psychological violence against military personnel.

5. Violent crimes committed by government officials or other civil servants: abuse of power or official authority accompanied by violence; torture committed by law enforcement authorities; coercion to testify; exceeding powers or official authority by a military service member.

6. Sexual crimes involving violence: rape; forced satisfaction of sexual desire in an unnatural manner; forced sexual intercourse ⁵.

The specified classification fully reflects the range of crimes during commission of which one person uses violence against another, and therefore criminal proceeding materials will necessarily contain evidence of such violence.

As for the state of violent crime in Ukraine, according to the Uniform Report on Criminal Offenses published on the official website of the Office of the Prosecutor General of Ukraine, a total of 267,744 crimes have been recorded for the period from January to November 2022, of which 70,440 have already been sent to court. Among such indictments, those that are

video evidence of violent crimes, identifying signs of traumatic impact on judges during such examination, analyzing the role of psychological preparation for judge candidates during specialized training and for judges while advanced training at the National School of Judges of Ukraine, and presenting my own perspective on means of preventing and addressing stress among judges.

It has been demonstrated that close contact with human suffering during performance of judicial duties has a significant traumatic impact on judges, and examination of video recordings of acts of violence creates the highest emotional attachment to such violence in contrast to other types of evidence, thus undoubtedly contributing to workplace psychological trauma in the digital age. In turn, video recordings in the framework of the domestic criminal legislation are considered as documents, and therefore they must be examined by judges directly in trial, in compliance with provisions of the current Criminal Procedure Code of Ukraine.

It has been established that tools for managing psychological state are provided to future judges during their professional psychological training at the National School of Judges of Ukraine and can be further supplemented through advanced training. However, considering that the issue of judges' psychological well-being, their awareness of self-control of their own psychological state, stress management, and post-traumatic stress disorder currently receive insufficient attention, effective means of institutional support have been proposed: personal leave (days of “mental health”); provision of assistance through closed, confidential counseling; conducting trainings or seminars on types of traumatizing evidence; provision of education and sufficient information about signs and symptoms of traumatic stress, prolonged traumatic stress, and PTSD; developing healthy strategies for coping with such conditions; holding trainings for the staff to maintain a healthy work environment; developing an informal support network. In addition, emphasis is placed on personal responsibility of judges for their own psychological well-being. What is more, recommendations on acknowledging stress as an atypical phenomenon as well as methods for self-regulation of psychological state are provided.

⁴ Шум С. С. Стан насильницької злочинності в Україні. *Право та державне управління* : збірник наукових праць / (за ред. О. В. Покатаєвої). Запоріжжя : КПУ, 2021. № 1. 340 с.

⁵ Храмцов О.М. Щодо видів насильницьких злочинів. *Вісник Харківського національного університету внутрішніх справ*. 2010. № 3(50). С. 86–93..



Key words: evidence, proof, video recording, video materials, documents, criminal procedure, traumatic stress, post-traumatic stress disorder.

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ENREGISTREMENT VIDÉO COMME PREUVE DE CRIMES VIOLENTS DANS UNE PROCÉDURE PÉNALE ET LEUR EFFET NÉGATIF SUR LE JUGE PENDANT SON ENQUÊTE À LA COUR

Selon les données statistiques de 2022 en Ukraine, la majorité des actes d'accusation envoyés au tribunal présentent des signes de crimes violents. Par conséquent, les juges travaillant dans les tribunaux de droit commun ne sont presque pas quotidiennement confrontés à des documents contenant des preuves du recours à la violence par l'accusé. Contre la victime. Lorsqu'il étudie des enregistrements vidéo lors d'une audience du tribunal comme preuve de la commission d'un crime violent, le juge se trouve à proximité immédiate d'une telle manifestation de violence, ce qui à son tour a un effet négatif sur son état psychologique. Un tel impact négatif se manifeste par un stress traumatique ou traumatique à long terme qui peut se transformer en trouble de stress post-traumatique (TSPT).

Malgré le grand nombre d'ouvrages consacrés à la définition d'un crime violent et à la place de l'enregistrement vidéo dans le système de preuve de l'actuel Code de procédure pénale de l'Ukraine, il faut constater que la littérature juridique n'a pas suffisamment abordé la question de l'impact négatif sur les juges de l'étude des preuves vidéo d'un crime violent lors d'une audience du tribunal et des moyens d'une telle influence.

L'objectif de l'article est d'analyser le phénomène des crimes violents en Ukraine, les enregistrements vidéo dans le système de preuve dans les procédures pénales, l'effet négatif de l'étude par un juge des preuves vidéo d'un crime violent, l'identification des signes de l'impact traumatique d'un tel crime. Recherches sur les juges, analysant la place de la préparation psychologique des candidats au poste de juge lors d'une formation spéciale et des juges dans le cadre d'une formation avancée à l'École nationale de la magistrature d'Ukraine, présentant leur propre vision des moyens de prévenir et de lutter contre les conditions de stress parmi juges.

Il a été établi qu'un contact étroit avec la souffrance humaine pendant qu'un juge exerce ses fonctions professionnelles à un impact traumatisant important sur

most characteristic of violent crime should be highlighted. Specifically, crimes committed against: fundamentals of national security of Ukraine (749); the life and health of individuals (4,120); will, honor, and dignity of individuals (133); sexual freedom and sexual inviolability of individuals (326); property (35,113); public safety (3,185); public order and morality (2,370). In total, these amount to 45,996 indictments, which means that more than half have been sent to court ⁶.

Taking into account such disappointing statistics, it becomes obvious that today every judge who hears criminal cases is forced almost daily to face an overt manifestation of violence, which is reflected in the evidence provided by the prosecution.

Analyzing the direct impact of handling violent crimes on the psychological state of a judge, we consider it appropriate to refer to the study conducted by American researchers titled *Burnout and Stress Among US Immigration Judges* published in the 13 Bender's Immigration Bulletin in January 2008. This research studied the phenomenon of emotional burnout, stress, and traumatic effects experienced by U.S. immigration judges during their consideration of immigration cases of asylum seekers.

According to the results of the indicated research, it has been established that every immigration court case contains a personal tragedy of the asylum seeker that happened to him/her in the past during her/his stay in his/her native country, including torture, bodily harm, humiliation, rape, etc. The evidence of the specified actions, which had been examined during trial, significantly traumatized judges, resulting in chronic stress and emotional burnout.

Thus, out of 96 questioned judges, the overall burnout score for male judges was 44.9 (on a maximum scale of 100), while for female judges, it was 59.9, which is a statistically significant difference⁷. What is more, according to the survey, the level of emotional burnout among immigration judges was much higher compared to any other professionals assessed, including those working in hospitals and correctional facilities. It should be noted that the study encompassed emotional burnout indicators using the following additional scales: personal burnout, work-related burnout, and client-related burnout. Researchers identified client-related burnout as the most crucial factor influencing judges' emotional state. Accordingly, the results revealed that female judges are much more susceptible to emotional burnout than male judges. Specifically, 4% of male judges reported "Always" experiencing emotional exhaustion, whereas among female judges, this figure reached 20% indicating a five-fold difference.

Regarding stress among judges, female judges also reported a higher prevalence of secondary traumatic stress compared to male judges. In particular, 11% of male judges indicated feeling "often" or "very often" emotionally numb, while 34% of female judges provided the same responses. As for difficulties with concentration, 4% of male judges and 17% of female judges reported experiencing it "often" or "very often". The percentage of those who get "easily irritated" was 13% for men and 29% for women ⁸.

Thus, it is clear that female judges on immigration issues have experienced much more stress than their male counterparts. At the same time, such an indicator did not depend on age, as younger judges regardless of their age had not reported about more or less burnout in contrast to the elderly judges.

⁶ Єдиний звіт про кримінальні правопорушення по державі за січень 2022. Офіс генерального прокурора: URL: <https://gp.gov.ua/ua/posts/pro-zareystrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.

⁷ Burnout and Stress Among United States Immigration Judges / Stuart L. Lustig, et. al. Newark, NJ : 13 Bender's Immigration Bulletin, January 1, 2008, 22-35 p.

⁸ Ibid.



The study also contains one comment of a judge expressing his opinion about the impact of secondary traumatic stress on him: "As an immigration judge, I have to hear about the worst experiences and injuries suffered by persons, particularly in asylum cases. I have to listen to stories about injuries suffered by individuals. I have to hear that almost every day. It emotionally depletes because it is painful to listen to such horrors day by day. I want to maintain balance but it's hard."⁹

This statement accurately describes the internal emotional state of a judge who encounters violence on a daily basis while handling court cases. Although this study focuses exclusively on immigration judges, it is evident that the traumatic factors mentioned are entirely applicable to consideration of criminal cases involving violent crimes. In both cases, evidence is examined to substantiate the violent impact on the victims.

From our perspective, video evidence of violence contained in criminal proceeding materials has the greatest impact on the psychological state of a judge.

When studying nature of such evidence, it is advisable to refer to provisions of Article 84 of the Criminal Code of Ukraine, according to which the evidence in a criminal proceeding is factual data obtained in the manner stipulated by this Code, on the basis of which the investigator, public prosecutor, investigating judge and court establish availability or lack of facts and circumstances that are important for a criminal proceeding and are subject to proof. In the second part of the mentioned article, the legislator provides an exhaustive list of procedural sources of evidence, including: testimonies, physical evidence, documents, expert conclusions.

Analyzing provisions of the current Criminal Procedure Code of Ukraine, it becomes evident that the legislator classifies video recordings as a type of document. In conformity with Part 1 of Article 99 of the Criminal Procedure Code of Ukraine, a document is defined as a specially created physical object aimed at preserving information, including recorded information through written signs, sound, images, etc., that can be used as evidence of a fact or circumstance established in a criminal proceeding.

Furthermore, Part 2 of that Article provides an exhaustive list of objects that can be classified as documents. This includes materials of photography, sound recordings, video recordings, and other information carriers (including computer data) (clause 1, Part 2 of Article 99 of the Criminal Code of Ukraine); materials obtained as a result of measures taken during a criminal proceeding in accordance with valid international treaties ratified by the Verkhovna Rada of Ukraine (clause 2, Part 2 of Article 99 of the Criminal Code of Ukraine); minutes of procedural actions and their annexes drawn up in accordance with this Code, as well as information carriers on which procedural actions have been recorded using technical means (clause 3, Part 2 of Article 99 of the Criminal Code of Ukraine); audits findings and inspection reports (clause 4, Part 2 of Article 99 of the Criminal Procedure Code of Ukraine).

Thus, in view of the above, we deem it appropriate to pay the greatest attention to clauses 1 and 3 of Part 2 of Article 99 of the Criminal Code of Ukraine, as these clauses are most relevant to video recordings as a source of evidence in a criminal proceeding.

Article 23 of the Criminal Code of Ukraine enshrines the principle of direct examination of testimonies, objects, and documents. Therefore, during a court hearing, the court examines documents in the same manner as other evidence in a case. When examining documents in the form of video recordings, the court uses technical devices available in the courtroom for their reproduction¹⁰.

lui, et les études d'enregistrements vidéo de violence créent la plus grande proximité émotionnelle avec une telle violence parmi d'autres types de preuves, et contribuent donc sans aucun doute aux traumatismes psychologiques sur le lieu de travail à l'ère des technologies numériques. À leur tour, les enregistrements vidéo dans le système de la législation pénale nationale font référence à des documents et doivent donc être examinés par le juge directement lors de l'audience, conformément aux dispositions du Code de procédure pénale de l'Ukraine en vigueur. Il a été établi que les futurs juges reçoivent des outils pour travailler avec leur état psychologique au cours d'une formation psychologique professionnelle à l'École nationale des juges d'Ukraine et qu'à l'avenir, ils pourront être complétés par une formation avancée. Dans le même temps, étant donné que le problème de la santé psychologique des juges et leur prise de conscience dans le domaine de l'auto-surveillance de leur propre état psychologique, de la lutte contre le stress et le syndrome de stress post-traumatique ne font actuellement pas l'objet d'une attention suffisante, des moyens efficaces de soutien institutionnel ont été proposés : des congés pour raisons personnelles (journées de « santé mentale ») ; une assistance par le biais de conseils fermés et confidentiels ; organiser des formations ou des ateliers sur les types de preuves de traumatismes ; une éducation et des informations suffisantes sur les signes et symptômes du stress traumatique, du stress traumatique à long terme et du TSPT ; développer des stratégies saines pour faire face à de telles conditions ; organiser des formations pour l'équipe sur le maintien d'un environnement de travail sain ; développement d'un réseau de soutien informel. En outre, l'attention est portée sur la responsabilité personnelle des juges quant à leur propre état psychologique, des recommandations sont fournies sur l'acceptation du stress en tant que phénomène atypique et sur les méthodes d'autorégulation de leur état psychologique.

But. Analyse de la place de l'enregistrement vidéo comme preuve dans le système de législation procédurale pénale nationale, son enquête par le tribunal lors de l'examen d'une procédure pénale pour commission d'un crime violent par une personne. Grâce à l'analyse menée, le problème de l'impact psychologique négatif important du matériel vidéo sur tous les participants au processus judiciaire, et en particulier sur les juges qui examinent et évaluent directement ces preuves au cours du procès, est révélé. En outre, des moyens efficaces sont fournis pour prévenir et contrer les situations de stress chez les juges. Conclusions.

⁹ Там само.

¹⁰ Кримінальний процесуальний кодекс України: Закон України від 13 квіт. 2012 р. № 4651-VI. Верховна рада України: URL: <https://zakon.rada.gov.ua/laws/show/4651-17#n2987>.

Ainsi, un enregistrement vidéo comme preuve dans une procédure pénale fait référence à des documents (partie 2 de l'article 99 du Code pénal de l'Ukraine) et occupe une place importante parmi d'autres types de preuves d'une personne commettant un crime violent. À leur tour, les juges travaillant dans les tribunaux de juridiction générale, étant donné le niveau élevé de crimes violents en Ukraine, traitent quotidiennement des documents de procédure pénale contenant des preuves vidéo de violences et sont les plus vulnérables au stress traumatique. Compte tenu des spécificités de leur travail, ces dernières peuvent être permanentes et même provoquer un syndrome de stress post-traumatique. En outre, ignorer les conséquences négatives du visionnage de preuves vidéo traumatisantes peut conduire à la dépression, à la colère, à l'anxiété, à une diminution du niveau de tolérance, d'empathie et de prise de décision impartiale, ce qui contredit définitivement les principes de la justice. Par conséquent, des mesures appropriées doivent être prises pour reconnaître et atténuer les effets psychologiques que peut provoquer la visualisation de telles preuves traumatisantes. À cet égard, le niveau de sensibilisation des juges aux conséquences négatives du visionnage continu de preuves vidéo de crimes violents occupe une place importante. Bien entendu, au cours d'une formation spéciale et d'une formation avancée à l'École nationale des juges d'Ukraine, les juges acquièrent certaines compétences de formation psychologique, ils disposent donc de certains outils pour maîtriser leur propre état psychologique, et en utilisant les méthodes présentées dans cet article et de nombreuses autres. Avec d'autres méthodes, chaque juge peut gérer le stress lui-même, mais il est extrêmement important que les systèmes juridiques et judiciaires continuent de développer une prise de conscience et une compréhension des conséquences du traumatisme secondaire et de son impact sur l'état physique, émotionnel, interpersonnel et psychologique d'une personne et bien-être. En particulier, il est nécessaire de créer un mécanisme développé de prévention du stress et du syndrome de stress post-traumatique parmi les juges du pouvoir judiciaire national.

Mots-clés : preuves, preuves, enregistrement vidéo, matériel vidéo, documents, procédure pénale, stress traumatique, trouble de stress post-traumatique.

Taking into account violent nature of crimes, during direct examination of video recording evidence in a criminal proceeding a judge experiences a traumatic impact that cannot be faced in any other types of court proceedings.

The *Workplace Trauma in the Digital Age: The Impact of Video Evidence of Violent Crimes on Criminal Justice Professionals* research by Ariia Birzhe, Keitelin Rehehr and Sheril Rehehr, published in the Journal of Interpersonal Violence, focuses on direct impact of video evidence on judges. According to the findings, a greater number of video evidence of violent crimes is a probable source of trauma requiring further consideration at the individual, systemic, and political levels within the entire justice system.

In this way, researchers identified the following risks associated with the use of such evidence by criminal justice professionals: emotional proximity to violence through video; unreadiness for violent content; re-experiencing traumatic impacts; long-lasting effects of video evidence as new elements contributing to workplace trauma and the development of post-traumatic stress disorder in the digital age.

Accordingly, when court examines case materials with video evidence of violence committed by the accused against the victim, all trial participants may be affected negatively in terms of their psychological well-being. In our opinion, the judge who directly examines such evidence is subjected to the greatest influence, paying attention to details not only during trial but also during preparation for it or while writing the court's verdict.

So why is video evidence considered the most traumatizing among others? The answer is embedded in its unique features, distinct, for example, from written evidence, namely: videos are more environmentally sound, visually appealing, and evoke stronger emotions in viewers, especially videos that elicit disgust and stress. The dynamics of facial expressions provide viewers with more emotional information, thereby activating more specific areas of the brain associated with emotions; inclusion of emotional information in audio recordings adds another level of affective activation, increasing the risk of secondary trauma when the voice content includes traumatic experiences of others.

In the context of criminal justice, these unique qualities of video, along with its widespread use and repeated transmission, contribute to the transmission of trauma between individuals in unprecedented ways, intensifying its impact and causing harm far beyond the primary acts of physical violence against the victims. Instead of "imagining what it would be like to be in their shoes," video evidence of violent crimes immortalizes real events, bringing viewers closer to aspects of offenses that would otherwise be fleeting, unnoticed, or unrecognized through traditional forms of evidence.

Reviewing of horrific images over a long period of time leads to significant stress reactions and its worsening. What is more, reviewing of details can have a pronounced traumatic effect ¹¹.

Thus, by examining video evidence depicting violent actions or their outcome, participants in legal proceedings experience traumatic and prolonged traumatic stress, which may trigger the development of post-traumatic stress disorder (PTSD) in some persons. Traumatic events capable of triggering PTSD include violence, involvement in hostilities, disasters, etc. ¹².

Symptoms of post-traumatic stress disorder (PTSD) can emerge suddenly, gradually, or resurface intermittently. They can arise seemingly

¹¹ Workplace Trauma in a Digital Age: The Impact of Video Evidence of Violent Crime on Criminal Justice Professionals/ Arija Birzhe, Kaitlyn Regehr, Cheryl Regehr, Journal of Interpersonal Violence, Vol. 0(0), 2022, 1-36 p.

¹² Козігора М. А. Концептуальні межі понять «стрес», «тривалий травматичний стрес», «посттравматичний стресовий розлад». *Science and Education a New Dimension. Pedagogy and Psychology*, IX (97), Issue: 246, 2021 Feb.

out of nowhere or be triggered by something that reminds the individual of the traumatic event or is associated with it. This can include the scene of the event, noises, smells, trigger words, or images. Typical signs include episodes of intrusive memories (reminiscence), dreams (often accompanied by elements of horror), occurring against the background of chronic feelings of being “stuck” and emotional numbness, alienation from others, a lack of responsiveness to surrounding events, anhedonia, avoidance of activities and situations that vaguely resemble a traumatic event. In particular cases, there are dramatic and acute outbreaks of fear, panic, and aggression triggered by stimuli that unexpectedly remind the individual of the trauma or elicit their initial reaction to it. Typically, there is a state of heightened autonomic arousal characterized by increased levels of activity, intensified startle response, and insomnia.

The above-mentioned symptoms and signs are often accompanied by anxiety and depression. Suicidal thoughts (ideation) are not uncommon and there is a high prevalence of alcohol and substance abuse.

Among emotions, anger and irritability prevail; feelings of guilt, shame, or self-blame; a sense of distrust and betrayal, as well as a feeling of “injustice of fate”; a sense of hopelessness; and a feeling of alienation¹³.

Considering the detrimental impact of continuous examination of video evidence depicting acts or outcomes of violence against victims on judges, the question arises about the adequacy of professional psychological training of the latter and their proficiency in countering such influence, self-analysis, recognizing signs of stress or post-traumatic stress disorder in order to provide timely psychological assistance.

It is worth noting that Article 69 of the Law of Ukraine *On the Judiciary and the Status of Judges*, which outlines requirements for a candidate for the position of a judge, does not stipulate any criteria regarding psychological preparation of a candidate for filling the position of a judge. Instead, a Ukrainian citizen, aged not younger than thirty and not older than sixty-five, who has a law degree, a minimum of five years of professional experience in the field of law, is competent, honest, and speaks the state language at the level determined by the National Commission on State Language Standards, can be appointed to the position of a judge.

At the same time, required psychological skills are acquired by the candidate through specialized training at the National School of Judges of Ukraine, which, in our opinion, is absolutely expedient, considering the significant psychological burden and traumatic impact that judges experience while fulfilling their professional duties.

Thus, within the structure of the National School of Judges of Ukraine, there is the Department of Scientific and Methodological Support of Psychological Training of Judges, which operates on a permanent basis. It is established with the purpose of enhancing the level of professional psychological competence among judicial personnel and promoting their adaptability to requirements of judicial activities. Apart from the scientific and methodological support and guidance for the professional psychological training of judge candidates and judges, the department also provides needed psychological assistance to judges and court staff in overcoming stress and consequences of psychogenic load related to performance of their official duties. This clearly indicates the presence in the latter of psychological issues associated with their professional activities¹⁴.

For the first time future judges receive tools for managing their psychological well-being during their professional psychological training at the National School of Judges of Ukraine. This training not only promotes

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**VIDEOAUFZEICHNUNG
ALS BEWEIS FÜR
GEWALTVERBRECHEN IM
STRAFVERFAHREN UND DEREN
NEGATIVE AUSWIRKUNG
AUF DEN RICHTER WÄHREND
SEINER ERMITTLUNG VOR
GERICHT**

Laut statistischen Daten für das Jahr 2022 in der Ukraine weisen die meisten Anklageschriften, die vor Gericht eingereicht werden, Anzeichen von Gewaltverbrechen auf. Daher werden Richter an ordentlichen Gerichten fast nicht täglich mit Dokumenten konfrontiert, die Beweise für die Anwendung von Gewalt durch Angeklagte enthalten. Gegen das Opfer. Bei der Untersuchung von Videoaufzeichnungen während einer Gerichtsverhandlung als Beweis für die Begehung eines Gewaltverbrechens befindet sich der Richter in unmittelbarer Nähe einer solchen Gewaltmanifestation, was sich wiederum negativ auf seine psychische Verfassung auswirkt. Solche negativen Auswirkungen äußern sich als langfristiger traumatischer oder traumatischer Stress, der sich zu einer posttraumatischen Belastungsstörung (PTBS) entwickeln kann.

Trotz der großen Anzahl von Arbeiten, die sich mit der Definition eines Gewaltverbrechens und der Stellung der Videoaufzeichnung im Beweissystem der aktuellen Strafprozessordnung der Ukraine befassen, ist anzumerken, dass sich die juristische Literatur nicht ausreichend mit der Frage befasst negative Auswirkungen der Untersuchung von Videobeweisen eines Gewaltverbrechens während einer Gerichtsverhandlung auf Richter und die Mittel einer solchen Einflussnahme. Ziel des Artikels ist es, das Phänomen der Gewaltverbrechen in der Ukraine, Videoaufzeichnungen im Beweissystem in Strafverfahren, die negativen Auswirkungen der Untersuchung von Videobeweisen eines Gewaltverbrechens durch einen Richter und die Identifizierung von Anzeichen traumatischer Auswirkungen zu analysieren so ein Verbrechen. Forschung über Richter, Analyse des Stellenwerts der psychologischen Vorbereitung von Kandidaten für das Amt des Richters während der Sonderausbildung und der Richter während der Fortbildung an der Nationalen Richterschule der Ukraine, Darstellung ihrer eigenen

¹³ Цихоня В. С. Пам'ятка про посттравматичний стресовий розлад. *Ліки України*, 2016. №7-8 С. 203-204..

¹⁴ Національна школа суддів України. URL: <http://nsj.gov.ua/ua/about/structure/science2/>.

Vision von Möglichkeiten zur Vorbeugung und Bekämpfung von Stresssituationen unter Richtern.

Es wurde festgestellt, dass der enge Kontakt mit menschlichem Leid während der Ausübung seiner beruflichen Tätigkeit für einen Richter erhebliche traumatische Auswirkungen hat, und Untersuchungen von Videoaufzeichnungen von Gewalt erzeugen unter anderen Arten von Beweisen die größte emotionale Nähe zu solcher Gewalt und sind daher zweifellos tragen im Zeitalter digitaler Technologien zu psychischen Traumata am Arbeitsplatz bei. Videoaufzeichnungen wiederum beziehen sich im System der nationalen Strafgesetzbildung auf Dokumente und müssen daher vom Richter gemäß den Bestimmungen der aktuellen Strafprozessordnung der Ukraine direkt während der Anhörung berücksichtigt werden. Es wurde festgestellt, dass zukünftige Richter während der professionellen psychologischen Ausbildung an der Nationalen Richterschule der Ukraine Werkzeuge für die Arbeit mit ihrem psychologischen Zustand erhalten und diese in Zukunft durch eine fortgeschrittene Ausbildung ergänzt werden können. Angesichts der Tatsache, dass dem Problem der psychischen Gesundheit von Richtern und ihrem Bewusstsein im Bereich der Selbstüberwachung des eigenen psychischen Zustands, der Bekämpfung von Stress und dem posttraumatischen Stresssyndrom derzeit nicht genügend Aufmerksamkeit und wirksame Mittel gewidmet werden der institutionellen Unterstützung wurden vorgeschlagen: Urlaub aus persönlichen Gründen („Tage der psychischen Gesundheit“); Hilfestellung durch geschlossene und vertrauliche Beratung; Schulungen oder Workshops zu Arten von Traumabewweisen organisieren; ausreichende Aufklärung und Information über die Anzeichen und Symptome von traumatischem Stress, langfristigem traumatischem Stress und PTSD; gesunde Strategien entwickeln, um mit solchen Erkrankungen umzugehen; Organisation von Schulungen für das Team zur Aufrechterhaltung eines gesunden Arbeitsumfelds; Aufbau eines informellen Unterstützungsnetzwerks. Darüber hinaus wird auf die Eigenverantwortung der Richter für die eigene psychische Verfassung geachtet, Empfehlungen zur Akzeptanz von Stress als atypischem Phänomen und zu

the development of professionally important, moral, ethical, and business qualities in judge candidates and judges but also ensures the psychological readiness of future judges for judicial activities. Moreover, it focuses on preventing professional deformation and the development of burnout syndrome among acting judges.

Psychological training involves training of candidates for the position of a judge and judges in the following:

- the ability to accurately assess one's psychological state, mood, and level of mental stress while handling tasks of varying complexity;
- psychological techniques and methods for avoiding and resolving conflict situations, ensuring personal safety in the context of professional judicial activities and everyday life;
- the main techniques of self-regulation and psychocorrection;
- development of psychological attitudes and readiness to apply relevant skills and abilities in professional judicial activities to ensure: fundamentals of personal professional security (in situations involving psychological pressure from various trial participants); skills and practices of psychological self-diagnosis and self-regulation to neutralize negative consequences of stressful situations and emotional-psychological load (particularly in difficult situations)¹⁵.

Emphasis is made on the trainings conducted in 2021 by the National School of Judges of Ukraine as part of their professional psychological training, namely: *Fundamentals of self-regulation and its role in adapting to judicial activities and Psychological peculiarities of communication with trial participants who have experienced psycho-traumatic disorder, Practical aspects of considering criminal proceedings involving domestic violence*. In this way, the National School of Judges of Ukraine conducts psychological educational activities for judge candidates and judges through which they acquire skills in self-regulation and working with individuals who have experienced psychotrauma (corresponding to the characteristic of a victim in a criminal proceeding)¹⁶. However, the judges' knowledge of the negative psychological impact is not a guarantee of its efficient application in practice and therefore sufficient judges' protection. In recent years, the judges' team has been experiencing a crisis due to insufficient staffing, resulting in excessive workloads for each judge. This, in turn, contributes to constant stress and emotional burnout. Under these circumstances, judges, as law professionals, are forced to focus as much as possible on fulfilling their judicial functions, often neglecting their physical and psychological well-being.

In compliance with provisions of Part 2 of Article 89 of the Law of Ukraine *On the Judiciary and the Status of Judges*, advanced training course is mandatory for judges at least once every three years. During this period, both mandatory training and elective training sessions are conducted based on individual needs of each judge.

Consequently, given an excessive workload and an extended period between mandatory advanced training sessions, judges have limited opportunities to acquire new skills in self-identification of being in a stressful state, psychological defense from stress, safe work with subjects who have signs of psycho-traumatic impact, and handling evidence that may cause psychological trauma to judges.

From our perspective, insufficient attention is currently given to the issue of judges' psychological well-being and their knowledge in the areas of self-control of their own psychological state, stress management, and post-

¹⁵ Концепція професійної психологічної підготовки у Національній школі суддів України. Національна школа суддів України. URL: <http://surl.li/exvyn>.

¹⁶ Інформаційно-аналітичний звіт про роботу відділу науково-методичного супроводження психологічної підготовки суддів за перше півріччя 2021 року. Національна школа суддів України. URL: <http://surl.li/exvyo>.

traumatic stress disorder (PTSD). Therefore, the domestic judicial system is responsible for taking measures to prevent and treat negative consequences of traumatic experiences, chronic traumatic stress and PTSD resulting from judges' involvement in professional activities, particularly when handling criminal cases that involve evidence of violent crimes (including examination of such traumatizing evidence). Institutional support may include:

- Personal leave, also known as "mental health days";
- Providing easily accessible assistance through closed, confidential counseling to reduce feelings of isolation and enhance the sense of support;
- Conducting trainings or seminars on types of traumatizing evidence to increase awareness of the risks associated with its examination and thus reduce its negative impact;
- Education and sufficient information about signs and symptoms of traumatic stress, chronic traumatic stress, PTSD, as well as development of healthy strategies for overcoming them;
- Holding trainings for the staff aimed at developing and supporting a healthy work environment, which can serve as a solid foundation for reducing overall stress level;
- In the lack of objective possibility for provision of official programmatic support and monitoring, the development of an informal support network can be beneficial, particularly for judges.

Therefore, the judicial system should recognize, encourage, and support judges in prevention and management of traumatic stress, chronic traumatic stress, and post-traumatic stress disorder (PTSD) resulting from their professional activities.

At the same time, the responsibility for their own psychological well-being and efficient counteraction to negative impact during performance of professional duties also lies with judges themselves. Thus, they should carefully listen to their inner state.

It should be emphasized that the biggest danger of experiencing such consequences for judges is not only the lack of awareness about the negative impact of daily exposure to violence in the course of their professional duties, but also a careless attitude towards their own psychological well-being. As a result, symptoms of stress are often attributed to usual fatigue and ignored, which can undoubtedly have even more negative consequences in the future.

First and foremost, it is vital for them to realize a few simple statements about stress that will help them accept it as a natural psychological phenomenon:

- Stress is not a sign of weakness in human nature, as only strong individuals are prone to workaholicism that may result in emotional burnout and exhaustion. It is not shameful to admit to oneself or to others that one is experiencing stress;
- Mild stress is much easier to self-diagnose, as stronger stress suppresses a person's ability to recognize it. Therefore, it is necessary to react promptly to signs of mild stress in order to prevent its persistence;
- Stress cannot be relieved solely through relaxation methods, so it is necessary to have a few more techniques for prevention and alleviation of stress;
- Only a judge is responsible for being in a stressful position, because stress is not a normal part of life but only the result of a subjective opinion of the judge.

Accordingly, given that judges considering criminal cases that involve violence are responsible for their own mental health and well-being, they need to learn to recognize and acknowledge their own stress and take actions to minimize it. Having knowledge of what to do to recognize and address feelings of mental exhaustion, overload, hyperactivity, and burnout can mitigate their consequences.

Methoden der Selbstregulation ihrer psychischen Verfassung gegeben.

Ziel. Analyse der Stellung der Videoaufzeichnung als Beweismittel im System der innerstaatlichen Strafprozessgesetzgebung, ihre gerichtliche Untersuchung bei der Prüfung eines Strafverfahrens

Daria Barbash

NAGRYWANIE WIDEO JAKO DOWÓD PRZESTĘPSTWA Z BRUTEM W POSTĘPOWANIU KARNYM I ICH NEGATYWNY WPŁYW NA SĘDZIĄ PODCZAS DOCHODZENIA SĄDOWEGO

Według danych statystycznych na Ukrainie za 2022 r. większość aktów oskarżenia kierowanych do sądu nosi znamiona brutalnych przestępstw. Dlatego sędziowie pracujący w sądach powszechnych niemal nie mają na co dzień do czynienia z dokumentami zawierającymi dowody stosowania przemocy przez oskarżonego. Przeciwko ofierze. Studiując nagrania wideo z rozprawy sądowej jako dowód popełnienia przestępstwa z użyciem przemocy, sędzia znajduje się w bliskim sąsiedztwie takiego przejawu przemocy, co z kolei odbija się negatywnie na jego stanie psychicznym. Taki negatywny wpływ objawia się długotrwałym stresem traumatycznym lub traumatycznym, który może przekształcić się w zespół stresu pourazowego (PTSD).

Pomimo dużej liczby prac poświęconych definicji przestępstwa z użyciem przemocy oraz miejscu nagrania wideo w systemie dowodowym obowiązującego Kodeksu postępowania karnego Ukrainy, należy zauważyć, że literatura prawnicza w niewystarczającym stopniu zajęła się problematyką negatywny wpływ na sędziów badania dowodów wideo dotyczących przestępstwa z użyciem przemocy podczas rozprawy sądowej oraz środków takiego oddziaływania. Celem artykułu jest analiza zjawiska przestępstw z użyciem przemocy na Ukrainie, nagrań wideo w systemie materiału dowodowego w postępowaniu karnym, negatywnego wpływu badania sędziowskiego materiału dowodowego na temat przestępstwa z użyciem przemocy, identyfikacja przejawów traumatycznego wpływu takie

przestępstwo. Badania sędziów, analiza miejsca przygotowania psychologicznego kandydatów na stanowisko sędziego w trakcie szkolenia specjalnego oraz sędziów w trakcie szkolenia zaawansowanego w Krajowej Szkole Sądownictwa Ukrainy, przedstawienie własnej wizji sposobów zapobiegania i zwalczania stanów stresowych wśród sędziów.

Ustalono, że bliski kontakt z ludzkim cierpieniem w czasie wykonywania przez sędziego obowiązków zawodowych wywiera na niego istotny traumatyczny wpływ, a badania nagrań wideo przemocy tworzą spośród innych rodzajów dowodów bliskość emocjonalną takiej przemocy, a zatem niewątpliwie przyczyniają się do urazów psychicznych w miejscu pracy w dobie technologii cyfrowych. Z kolei nagrania wideo w systemie krajowego prawa karnego odnoszą się do dokumentów i dlatego muszą być rozpatrywane przez sędziego bezpośrednio podczas rozprawy, zgodnie z przepisami obowiązującego Kodeksu postępowania karnego Ukrainy. Ustalono, że przyszli sędziowie otrzymują narzędzia pracy ze swoim stanem psychicznym w trakcie profesjonalnego szkolenia psychologicznego w Krajowej Szkole Sędziów Ukrainy, a w przyszłości mogą je uzupełniać szkoleniem zaawansowanym. Jednocześnie, biorąc pod uwagę, że problematyce zdrowia psychicznego sędziów i ich świadomości w zakresie samokontroli własnego stanu psychicznego, walki ze stresem i zespołem stresu pourazowego nie poświęca się obecnie wystarczającej uwagi,

Thus, one of the essential components of burnout treatment is self-care, recognizing oneself as a holistic living organism with physical and psychological needs. This includes regular physical exercise, proper balanced nutrition, enjoyable leisure activities, humor, supportive counseling with specialists, and engaging in emotionally positive and beneficial activities. All of these are effective means to focus on oneself as an identity and shift away from work-related stress.

Also, a useful method in case of evident manifestations of stress and PTSD would be slow deep breaths, which slow down the heart rate and breathing, lower blood pressure, and help restore the body's balance.

Other self-regulation methods are sufficiently familiar to many and are used regularly: taking short purposeful breaks from work environment, sipping (not gulping) a warm or cold drink, taking a short walk with intentional awareness of body movement and sensations.

Conclusions. To summarize, video recording as evidence in criminal proceedings falls under the category of documents (Part 2 of Article 99 of the Criminal Code of Ukraine) and occupies an important place among other types of evidence of commission by a person of a violent crime. In turn, judges working at general jurisdiction courts and considering the high level of violent crime in Ukraine deal with criminal case materials containing video evidence of violence on a daily basis and are the most vulnerable to traumatic stress. Given the specifics of their work, it can become constant and even lead to the development of post-traumatic stress disorder. Ignoring negative consequences of viewing traumatic video evidence can result in depression, anger, anxiety, decreased levels of tolerance, empathy, and unbiased decision-making, which undoubtedly contradicts the principles of justice administration. Therefore, it is required to take appropriate measures to recognize and mitigate psychological consequences that may arise from viewing such traumatic pieces of evidence.

In this aspect, a significant place is taken by judges' awareness of the negative consequences of prolonged exposure to video evidence of violent crimes. Certainly, while their specialized training and advanced training at the National School of Judges of Ukraine, judges acquire certain skills in psychological preparation, and they have some tools for self-control of their psychological state. By using the methods mentioned in this paper and many others, each judge can cope with stress in his or her own way. However, it is crucial for the legal and judicial systems to continue developing awareness and understanding of the consequences of secondary trauma and its impact on individuals' physical, emotional, interpersonal, and psychological well-being.

Specifically, it is vital to establish a developed mechanism for prevention and intervention of stress and post-traumatic stress disorder among judges within the domestic judiciary.

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skuteczne środki zaproponowano wsparcie instytucjonalne: urlopy z powodów osobistych (dni „zdrowia psychicznego”); pomoc poprzez zamknięte i poufne porady; organizować szkolenia lub warsztaty dotyczące rodzajów dowodów traumy; wystarczająca edukacja i informacja na temat oznak i objawów stresu traumatycznego, długotrwałego stresu traumatycznego i PTSD; opracować zdrowe strategie radzenia sobie z takimi schorzeniami; organizować szkolenia dla zespołu z zakresu utrzymania zdrowego środowiska pracy; rozwój nieformalnej sieci wsparcia. Ponadto zwrócono uwagę na osobistą odpowiedzialność sędziów za własny stan psychiczny, przedstawiono zalecenia dotyczące akceptacji stresu jako zjawiska nietypowego oraz sposobów samoregulacji własnego stanu psychicznego.

Cel. Analiza miejsca nagrania wideo jako dowodu w systemie krajowego prawodawstwa procesowego karnego, jego rozpoznanie przez sąd przy rozpatrywaniu postępowania karnego

Received by Editorial Board: 16.04.2023

Suggested Citation:

Barbash, D. (2023). Video Recording As Evidence Of Violent Crimes In A Criminal Proceeding And Its Negative Impact On The Judge During Its Investigation In Trial. *Archives of Criminology and Forensic Sciences*. 1 (7). 71-81. DOI: <https://doi.org/10.32353/acfs.7.2023.05>