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Use Of Special Knowledge During The Investigation Of Knowingly False Testimony Of The Witness And The Victim

Fair and objective justice requires compliance by all its participants with legally established principles. At the same time, in law enforcement practice there are cases of falsification of evidence, which is caused by various circumstances, and motivational factors that are guided by the participants in the process, in particular, the witness and the victim. That is why similar acts are criminalized, and the scientific community has an updated task to develop substantiated recommendations for improving the quality of investigations of similar facts. Taking into account the significant importance of special knowledge in similar criminal proceedings, which is evidenced by the analysis of court practice, the purpose of the article is defined as the clarification of typical forms of special knowledge used during the pre-trial investigation of knowingly false statements by witnesses and victims, the specifics of their implementation. Based on the results of the research, it was determined that the appointment of a forensic handwriting examination, a forensic psychiatric examination, a forensic psychological examination, in particular with the use of a polygraph, a forensic telecommunications examination, and less often a technical examination of a document is typical. Each of the outlined forensic examinations has its specifics that need to be considered. Prospects for further scientific research are outlined.

Key words: criminal proceedings, pretrial investigation, special knowledge, knowingly false testimony, forensic examination, specialist, polygraph, witness, victim.

Research Problem Formulation. Features of specifics expertise use of in criminal proceedings are one of the central and most discussed issues among Ukrainian scientists and practitioners. The latter direct their efforts to identify and solve problematic aspects of involvement of forensic experts, involvement of specialists in criminal proceedings, implementation of non-procedural forms of the use of special knowledge during the investigation, etc. It is worth noting the significant contribution to theoretical development of the outlined questions by such Ukrainian scientists such as Yu. P. Alenin, L. Yu. Arotsker, V. P. Bakhin, P. D. Bilenchuk, M. S. Bokarius, V. I. Halahan, V. H. Honcharenko, I. V. Hora, V. O. Husieva, I. I. Kohutych, O. N. Kolesnichenko, V. P. Kolmakov, V. O. Konovalova, V. S. Kuzmichov, V. G. Lukashevich, Ye. D. Lukianchikov, V. T. Nor, O. V. Oderii, I. A. Petrova, I. V. Pryih, B. V. Romaniuk, M. V. Salteviskyi, E. B. Simakova-Yefremian, H. O. Spitsyna, R. L. Stepaniuk, P. V. Tsybmal, Yu. M. Chornous, V. M. Shevchuk, V. Yu. Shepitko, M. G. Shcherbakovskyi, V. V. Yusupov et al. Each of them devoted thorough attention to the solution of individual debatable questions in the context of the outlined problems, provided the author's definition of the central categories of the institute of special knowledge in the criminal process. However, some specific aspects of the outlined problems should be clarified and determined taking into account the specifics of a single narrow problem. One of them is the specifics of the use of special knowledge during the investigation of known false testimony in



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Declaration of Competing Interest

The author declare that they have no conflict of interest.

**ВИКОРИСТАННЯ
СПЕЦІАЛЬНИХ ЗНАЙ
ПІД ЧАС РОЗСЛІДУВАННЯ
НАДАННЯ ЗАВІДОМО
НЕПРАВДИВИХ ПОКАЗАНЬ
СВІДКОМ ТА ПОТЕРПІЛИМ**

Справедливе й об'єктивне правосуддя вимагає дотримання всіма його учасниками законодавчо закріплених засад. Разом із тим, у правозастосовній практиці мають місце випадки фальсифікації доказів, що зумовлено різними обставинами та мотиваційними чинниками, якими керуються учасники процесу, зокрема свідок та потерпілий. Саме тому подібні діяння криміналізовано, а перед науковою спільнотою актуалізоване завдання щодо розроблення обґрунтованих рекомендацій підвищення якості розслідування подібних фактів. Зважаючи на вагоме значення у подібних кримінальних провадженнях спеціальних знань, що засвідчується проведенням аналізом судової практики, мету статті визначено як з'ясування типових форм спеціальних знань, що використовуються під час досудового розслідування надання завідомо неправдивих показань свідком та потерпілим, особливостей їх реалізації. За результатами дослідження визначено, що типовим є призначення судово-психологічної експертизи, судово-психіатричної експертизи, судово-психологічної експертизи, зокрема і з застосуванням поліграфу, судово-телекомунікаційної експертизи, рідше – технічної експертизи документу. Кожна

criminal proceedings which have not yet been analyzed in the legal literature, and therefore require their own solution.

Analysis of Essential Researches and Publications. In order to ensure fair, impartial, competent and objective justice, at one time the legislator faced the task of criminalizing the facts of giving knowingly false statements by witnesses and victims. The actions of these subjects are currently criminalized by Art. 384 of Criminal Code of Ukraine. At the same time, such responsibility is not provided for the commission of similar actions by suspects, accused and defendants in criminal proceedings that is determined by traditions of the national legal system that currently recognizes them as a means of protection. However, this does not negate the need to resolve during the pre-trial investigation the question of reliability and objectivity of the testimony given by the person. The very issues related to verification of a person's testimony, given both during an interrogation and an investigative experiment, have already repeatedly found their coverage in legal literature. Research papers of I. V. Hora and V. A. Kolesnyk¹, O. S. Korobka², O. O. Protsenko³, O. M. Tsilimak⁴ and others are devoted to these issues. The scientists did not ignore the question of the use polygraph in investigative practice as an effective means of ascertaining the reliability and objectivity of testimony⁵. At the same time, definition of typical forms of specific expertise used, specifics of appointment of forensic examinations, the involvement of specialists in criminal proceedings of the mentioned category still remain outside the attention of scientists, that proves the need to cover these aspects in legal literature.

This **Article Purpose** is to find out typical forms of specific expertise used during the pre-trial investigation of deliberately false statements by witnesses and victims, as well as specifics of their implementation during pre-trial investigation.

Main Content Presentation. According to Criminal Procedure Law of Ukraine, testimony is one of procedural sources of evidence. During the pre-trial investigation of criminal offenses, investigator or inquirer can receive statements from victims, suspects and witnesses. At the same time, only a

¹ Гора І. В., Колесник Б. А. Слідчий експеримент чи перевірка показань особи? *Вісник Луганського державного університету внутрішніх справ імені ЕО Дідоренка*. 2012. № 3. С. 248-256.

² Коробка О. С. Допит у конфліктній слідчій ситуації. *Юридичний науковий електронний журнал*. 2020. №2. С. 382-385.

³ Проценко О. О. Верифікація показань під час допиту неповнолітнього підозрюваного. *Юридична психологія*. 2019. Т. 25. № 2. С. 86-92.

⁴ Цільмак О. М. Фактори неусвідомленого викривлення особою показань. *Криміналістика і судова експертиза*. 2022. №67. С. 658-671.

⁵ Нанівський В., Лешкович Т. Перспективи використання поліграфа у кримінальному провадженні. *Вісник Національної академії прокуратури України*. 2014. № 1. С. 33-38; Цимбал П. В., Линник О. В., Бордачова Я. М. Перспективи використання технічних засобів виявлення неправдивої інформації при розслідуванні кримінальних правопорушень. *Міжнародний юридичний вісник: актуальні проблеми сучасності (теорія та практика)*. 2017. № 4-5 (8-9). С. 144-149; Вуйма А. Г. Застосування поліграфу як непроцесуальна форма використання спеціальних знань під час розслідування вбивств. *Розвиток науки та техніки: проблеми і перспективи: матер. міжнар. наук-практ. інтернет-конф. з нагоди відзначення Дня науки-2021 в Україні (м. Київ, 20 травня 2021 р.)*. Київ, Державний науково-дослідний інститут МВС України, 2021. С. 96-9; Шевчук В. М. Інноваційні напрями оптимізації слідчої (детективної) діяльності у сучасних умовах. *Теорія та практика судової експертизи і криміналістики*. 2021. Вип. 2 (24). С. 8-25.





person who gave false testimony as a victim and witness is subject to criminal prosecution.

The victim's testimony in criminal proceedings is important for proving a person's guilt in various categories of criminal proceedings. Often this is the only direct evidence of accused's guilt. The victim gives evidence regarding circumstances that are subject to proof (Article 91 of Criminal Procedural Code of Ukraine). An integral part of the victim's testimony is his thoughts and assumptions made during the interrogation. This is acceptable, considering that victim in most cases is an eyewitness of a criminal offense, having directly encountered a criminal offense or the offender himself, and therefore, he knows more than anyone else about the circumstances of the criminal offense that caused him harm⁶.

Regarding eyewitness testimony, some scholars emphasize that it is not always as reliable or as accurate as might be hoped, given the weight often placed on it by procedural decision makers⁷. Such theses are also confirmed in the precedent practice of the European Court of Human Rights. Thus, in the decision in case of Doorson v. the Netherlands, ECtHR indicated that a conviction cannot be based solely or decisively on testimony that the defense cannot dispute⁸. In the Case of Kornev and Karpenko v. Ukraine, the ECtHR noted that "if the conviction is solely or decisively based on the testimony of a person whom the defendant did not have the opportunity to interrogate or obtain the interrogation of, neither during the pre-trial investigation nor during the trial, the rights of the defense are revealed limited to the extent that is incompatible with the guarantees provided for in Article 6 of the Convention"⁹. At the same time, despite this, sometimes the guilt of a person is proven only on the basis of the testimony of the participants in the hearing that proves the need to find out their credibility. However, even the reporting of biased information by a person actualizes the need to find out whether the person had the intention to give false testimony and thus mislead the persons authorized by law. Clarification during investigation of outlined problems is facilitated by the specific expertise use.

At the same time, it should be taken into account that a pre-trial investigation can be carried out not only in connection with a person giving deliberately false statements to investigator, prosecutor, agent, but in case of misleading court by providing false information in administrative proceedings. during consideration of civil cases, etc.

Thereby in particular, as defined by the Code of Administrative Proceedings of Ukraine, one of the provided evidence, i.e. on which basis court finds out availability or lack of circumstances (facts) that substantiate the claims and objections of the parties to the case, or other circumstances that are important for the resolution of the case, there are witness statements¹⁰. This Code does not provide for the possibility of testimony by other participants in the process. Similar definitions are contained in Art. 72 of the Code of Administrative Proceedings of Ukraine¹¹ and in Art.

з окреслених судових експертиз має свою специфіку, що потребує врахування. Окреслено перспективи подальших наукових досліджень.

Ключові слова: кримінальне провадження, досудове розслідування, спеціальні знання, завідомо неправдиві показання, судова експертиза, спеціаліст, поліграф, свідок, потерпілий.

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USE OF SPECIAL KNOWLEDGE DURING THE INVESTIGATION OF KNOWINGLY FALSE TESTIMONY OF THE WITNESS AND THE VICTIM

Fair and objective justice requires compliance by all its participants with legally established principles. At the same time, in law enforcement practice there are cases of falsification of evidence, which is caused by various circumstances, and motivational factors that are guided by the participants in the process, in particular, the witness and the victim. That is why similar acts are criminalized, and the scientific community has an updated task to develop substantiated recommendations for improving the quality of investigations of similar facts. Taking into account the significant importance of special knowledge in similar criminal proceedings, which is evidenced by the analysis of court practice, the purpose of the article is defined as the clarification of typical forms of special knowledge used during the pre-trial investigation of knowingly false statements by witnesses and victims, the specifics of their implementation. Based on the results of the research, it was determined that the appointment of a forensic handwriting examination, a forensic psychiatric examination, a forensic psychological examination, in particular with the use of a polygraph, a forensic telecommunications examination, and less often a technical examination of a document is typical. Each of the outlined forensic examinations has its specifics that need to be considered. Prospects for further scientific research are outlined.

Key words: criminal proceedings, pretrial investigation, special knowledge, knowingly false testimony, forensic examination, specialist, polygraph, witness, victim.

⁶ Boiarov V., Larkin M., Dudorov O., Pyrozhkova Y., Legkykh K. Interrogation of the victims during the investigation of crimes committed by youth extremist groups. *Amazonia Investiga*. 2020. № 9 (28). P. 286.

⁷ Robert A. Nash Maciej Hanczakowski Giuliana Mazzoni. Eyewitness Testimony. *International Encyclopedia of the Social & Behavioral Sciences* (Second Edition). 2015. P. 642.

⁸ Справа «Дорсон проти Нідерландів» (Doorson v. the Netherlands): Рішення Європейського суду з прав людини від 26.03.1996 // International Centre on Human Rights and Drug Policy. URL: <https://www.hr-dp.org/contents/545>

⁹ Справа «Корнев і Карпенко проти України»: Рішення Європейського суду з прав людини (П'ята секція) від 21.10.2010 // БД «Законодавство України» / ВР України. URL: https://zakon.rada.gov.ua/laws/show/974_637#Text

¹⁰ Цивільний процесуальний кодекс України: Закон України від 18.03.2004 № 1618-IV // БД «Законодавство України» / ВР України. URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text>

¹¹ Кодекс адміністративного судочинства: Закон України від 06.07.2005 №2747-IV // БД «Законодавство України» / ВР України. URL: <https://zakon.rada.gov.ua/laws/main/2747-15#Text>

DIE NUTZUNG VON SPEZIELLEM WISSEN BEI DER UNTERSUCHUNG OFFENSICHTLICH FALSCHER AUSSAGEN VON ZEUGEN UND OPFERN

Fairheit und Objektivität in der Justiz erfordern die Einhaltung rechtlich festgelegter Prinzipien durch alle Beteiligten. Gleichzeitig gibt es in der Praxis der Strafverfolgungsbehörden Fälle gefälschter Beweise, die durch verschiedene Umstände und Motivationsfaktoren der am Prozess Beteiligten, insbesondere des Zeugen und Opfers, verursacht werden. Aus diesem Grund werden vergleichbare Handlungen kriminalisiert, und es ist Aufgabe der Wissenschaft, fundierte Empfehlungen zur Verbesserung der Qualität von Ermittlungen in ähnlichen Fällen zu erarbeiten. Vor dem Hintergrund der erheblichen Bedeutung speziellen Wissens in vergleichbaren Strafverfahren, wie die Analyse der Rechtspraxis zeigt, besteht das Ziel des Artikels darin, typische Formen speziellen Wissens zu klären, die bei vorgerichtlichen Ermittlungen zu absichtlich falschen Informationen, Aussagen von Zeugen und Opfern, zum Einsatz kommen und deren Besonderheiten aufzuzeigen. Auf der Grundlage der Forschungsergebnisse wurde festgestellt, dass die Benennung einer wissenschaftlichen Schriftanalyse, einer psychiatrischen Begutachtung, einer psychologischen Analyse, insbesondere unter Verwendung eines Polygraphen, einer wissenschaftlichen Kommunikationsanalyse und seltener einer technischen Dokumentenprüfung typisch ist. Jede der beschriebenen wissenschaftlichen Analysen hat ihre eigenen Besonderheiten, die zu

73 of Commercial and Procedural Code of Ukraine¹². Thus, for a report by a person who is a victim or a witness in the outlined proceedings of knowingly false testimony, current legislation provides for criminal prosecution, since this is one of the criminal offenses, committing which a person encroaches on legality of the procedural activities of a judge, investigator, prosecutor or other authorized persons representatives of law enforcement agencies that makes possible to attribute it to the group of criminal offenses against justice. From the tactical point of view, we understand them as one of the ways of countering the investigation.

At the same time, it should be noted that the procedural legislation of different branches of law regulates the procedure for a person to testify in different ways. This undoubtedly affects the forms of specific expertise use. Thus, in particular, the civil procedural law provides for possibility of written questioning of participants in the case as witnesses. Due to which, answering such a question, a person acquires the status of a witness, i.e. becomes a special subject of a criminal offense (within the meaning of Part 1 of Article 384 of Criminal Code of Ukraine), and the recording of his false testimony takes place in material sources (meaning, not only in audio or video format). This may actualize during the pre-trial investigation the need for an expert study of materially recorded testimony of a person in order to find out the authorship of the written explanation, socio-biographical portrait of the person who made it, etc.

Before moving on to elucidating specifics of implementation of individual forms of the use of special knowledge, we can generalize that out of 150 analyzed court verdicts from the Unified State Register of Court Decisions, passed on the fact of misleading the court, by giving deliberately false statements by witnesses or victims, only in 26 used specific expertise that is 17.3% of criminal proceedings. In each of the latter, only one form of specific expertise use was used; the involvement of forensic expert in examination. Therefore, taking into account the outlined aspects, as well as on the basis of generalization of investigative and judicial practice, we consider it necessary to generalize specifics of implementation of this particular form of using specific expertise during investigation of criminal proceedings on the basis of the criminal offense provided for in Article 384 of Criminal Code of Ukraine.

As for the types of forensic examinations that were ordered during investigation, based on the analysis of judicial practice, we can generalize that in 11 of the 26 analyzed cases, forensic handwriting examinations were conducted, in 6 – mental state examination (MSE), and in 3 – forensic psychology analysis (one of which with the use of a polygraph), in 2 – forensic examination of telecommunication systems, in 1 – questioned document examination (QDE). At the same time, in three criminal proceedings, forensic

examinations were conducted, but they were not examined during the court hearings, which allows us to assert that they did not have categorical conclusions regarding the questions that were asked by the investigators for the forensic expert to solve. Performed generalization proves the need to first determine possibilities and specifics of those forensic examinations, which are most often appointed at the stage of pre-trial investigation of the criminal offenses we are investigating.

Forensic handwriting analysis is mostly carried out in order to certify the fact



¹² Господарський процесуальний кодекс України: Закон України від 06.11.1991 №1798-ХІІ // БД «Законодавство України» / ВР України. URL: <https://zakon.rada.gov.ua/laws/main/2747-15#Text>



that signature in the protocol belongs to the person who participated in the investigative (search) action. Obtaining a sufficient number of handwriting or signature samples is important during its appointment. This plays an important role for the correct identification of a person, because if the expert has insufficient samples, it will be impossible to trace the stability of the signs of handwriting or signature. Moreover, one person can have several variants of handwriting or signature, it can change during life or depending on certain conditions (which leads to the need to select free samples under the same conditions)¹³. At the same time, it is worth noting that in this category of cases, there are almost no significant issues during appointment of forensic examinations, because the materials, as a rule, are sent that are stored in criminal proceedings, materials of court cases, etc. Because of this, the main task of investigator or prosecutor is to ensure the correct selection of comparative samples of a person's handwriting that will be sent for forensic examination.

Regarding appointment of mental state examination (MSE), based on analyzed verdicts, we can generalize that all of them were conducted on an outpatient basis. The main task that was entrusted to the decision of the forensic expert was to decide whether the person has a mental illness or a disorder of mental activity, which would deprive him of opportunity to be fully or partially aware of his actions and/or to control them. In other words, finding out the specifics of a person's mental state in certain legally significant periods of time, the need to apply coercive measures of a medical nature to him. It is noteworthy that not a single forensic expert's conclusion contained a provision on application of the mentioned measures to the examinee person, although the following were established: clinical signs of personality disorder and behavior as a result of combined use of psychoactive substances and alcohol¹⁴; signs of emotionally labile (asthenic) disorder due to traumatic brain injury¹⁵; mental and behavioral disorders due to alcohol consumption¹⁶; signs of mild mental retardation (slight retardation),¹⁷ etc. At the same time, even finding out and identifying a person's mild mental retardation (in the degree of moderately pronounced debility), which prevented him from being fully aware of his actions and managing them during the period of the act incriminated against him, did not become the basis for the expert to state the need to apply coercive measures of a medical nature¹⁸ to such a person. Thus, during pre-trial investigation, there is undoubtedly a need to appoint a forensic psychiatric examination, however, several important circumstances should be taken into account.

First, one should take into account presumption of mental health in force in Ukraine, according to which any person who commits an illegal act is considered capable of realizing his actions and managing them in full, until

berücksichtigen sind. Perspektiven für weitere wissenschaftliche Forschung werden beschrieben.

Schlüsselwörter: Strafverfahren, Voruntersuchung, spezielles Wissen, vorsätzlich falsche Aussage, wissenschaftliche Analyse, Sachverständiger, Polygraph, Zeuge, Opfer.

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UTILISATION DE CONNAISSANCES SPECIALES LORS DE L'ENQUETE SUR DES DECLARATIONS NOTOIREMENT FAUSSES DE TEMOINS ET DE VICTIMES

Une justice juste et objective exige le respect par tous ses participants des principes légalement établis. Dans le même temps, dans la pratique des forces de l'ordre, il existe des cas de falsification de preuves, provoqués par diverses circonstances et facteurs de motivation, qui sont guidés par les participants au processus, en particulier le témoin et la victime. C'est pourquoi des actes similaires sont criminalisés, et la communauté scientifique a pour tâche actualisée d'élaborer des recommandations fondées pour améliorer la qualité des enquêtes sur des faits similaires. Compte tenu de l'importance significative des connaissances spéciales dans des procédures pénales similaires, comme en témoigne l'analyse de la pratique judiciaire, l'objectif de l'article est défini comme la clarification des formes typiques de connaissances spéciales utilisées au cours de l'enquête préalable au procès sur des informations sciemment fausses, les déclarations des témoins et des victimes, les spécificités de leur mise en œuvre. Sur la base des résultats de la recherche, il a été déterminé que la nomination d'une analyse scientifique d'écriture, d'un examen analyse psychiatrique, d'une analyse psychologique, notamment avec l'utilisation d'un polygraphe, d'analyse scientifique des télécommunications et, moins souvent, d'un examen technique d'un document est typique. Chacun des analyses scientifiques décrits à ses propres spécificités qui doivent être prises en compte. Des perspectives de recherche scientifique ultérieure sont décrites.

Mots-clés : procédure pénale, enquête préliminaire, connaissances particulières, faux témoignage sciemment, analyse scientifique, spécialiste, polygraphe, témoin, victime

¹³ Золота Л. В., Савченко І. О. Проблематика призначення почеркознавчої експертизи в цивільному судочинстві. *Науковий вісник Ужгородського Національного Університету. Серія Право*. 2022. Випуск 70. С. 176-177.

¹⁴ Вирок Новоград-Волинського міськрайонного суду Житомирської області від 07.09.2022 р., у справі № 285/350/22 // Єдиний державний реєстр судових рішень: офіц. сайт. URL: <https://reestr.court.gov.ua/Review/106109925>

¹⁵ Вирок Хотинського районного суду Чернівецької області від 09.12.2019 р., у справі №724/1089/19 // Єдиний державний реєстр судових рішень: офіц. сайт. URL: <https://reestr.court.gov.ua/Review/86193275>

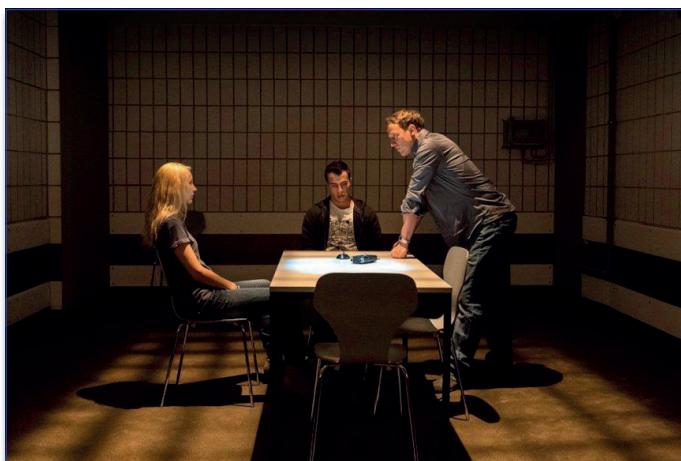
¹⁶ Вирок Шепетівського міськрайонного суду Хмельницької області від 13.07.2022 р., у справі №688/1606/22 // Єдиний державний реєстр судових рішень: офіц. сайт. URL: <https://reestr.court.gov.ua/Review/105248657>

¹⁷ Вирок Тростянецького районного суду Сумської області від 15.02.2016 р., у справі №588/1810/15-к // Єдиний державний реєстр судових рішень: офіц. сайт. URL: <https://reestr.court.gov.ua/Review/55748276>

¹⁸ Вирок Красногвардійського районного суду Автономної Республіки Крим від 02.09.2013 р., у справі №109/3113/2013-к // Єдиний державний реєстр судових рішень: офіц. сайт. URL: <https://reestr.court.gov.ua/Review/33228255>

**WYKORZYSTANIE
WIEDZY SPECJALNEJ
PODCZAS DOCHODZENIA
NOTORYCZNE FALSZYWEGO
OŚWIADCZEŃ ŚWIADKÓW I
OFIAR**

Uczciwa i obiektywna sprawiedliwość wymaga poszanowania przez wszystkich jej uczestników prawnie ustalonych zasad. Jednocześnie w praktyce organów ścigania zdarzają się przypadki fałszowania dowodów, wywołane różnymi okolicznościami i czynnikami motywującymi, którymi kierują się uczestnicy procesu, w szczególności świadek i pokrzywdzony. Dlatego podobne czyny są kryminalizowane, a społeczność naukowa ma aktualne zadanie polegające na opracowaniu uzasadnionych zaleceń w celu poprawy jakości badań dotyczących podobnych faktów. Biorąc pod uwagę istotne znaczenie wiedzy specjalistycznej w podobnym postępowaniu karnym, czego dowodem jest analiza praktyki sądowej, cel artykułu określono jako wyjaśnienie typowych form wiedzy specjalnej wykorzystywanej w toku dochodzenia przygotowawczego w sprawie świadome fałszywych informacji, zeznania świadków i ofiar, specyfika ich realizacji. Na podstawie wyników badań ustalono, że powołanie naukowej analizy pisma ręcznego, badania psychiatrycznego, analizy psychologicznej, w tym z wykorzystaniem wariografu, naukowej analizy telekomunikacji oraz, rzadziej, technicznej recenzji dokumentu jest typowe. Każda z opisanych analiz naukowych ma swoją specyfikę, którą należy wziąć pod uwagę. Opisano perspektywy dalszych badań naukowych.



the contrary is proven¹⁹. In this regard, appointment of a forensic psychiatric examination of a person who does not demonstrate signs of a disorder of behavior or mental activity or for whom presence of a mental illness has not been properly confirmed, according to a medical document, can be defined as groundless and related to a violation human rights and freedoms²⁰. In other cases, appointment of forensic examination should be justified. As indicated in the legal literature, the following grounds can be considered sufficient: exemption of a person from military service due to the presence of a mental illness or mental disorder; stay in hospital treatment due to treatment of head injuries, brain contusions, spinal cord injuries, spinal cord injuries; inappropriate behavior of a person during or after committing a socially dangerous act (obscuring consciousness, impaired perception, thinking, will, emotions, intellect or memory, etc.), etc.²¹ Based on the above, we can determine the second reason that should be taken into account when deciding on appointment of a forensic psychiatric examination, that, in particular, manifestations of inadequate behavior or mental retardation in her behavior. After all, there are rare cases when the defense side induces a person who has a mental illness or low intelligence and by persuasion, providing material values, etc., forces him to give knowingly false statements to an investigator, court or other authorized body. Thus, during the pre-trial investigation, the investigator must pay close attention to the personal characteristics of the person, regarding whom there are reasons to believe that they are involved in the commission of a criminal offense of category under research, evaluate their behavior, etc.

Along with specified areas of conducting forensic psychiatric examinations in the context of our research, one cannot bypass psychological research on individual perception characteristics, attention and memory of the victim, witness and suspect. The methods of conducting expert research registered by the Ministry of Justice of Ukraine include: Multidisciplinary methods of research of psychological features of attention and sensorimotor reactions, Complex method of research of psychological features of memory (test of visual and auditory memory, short-term, operational memory, memory for numbers, images, etc.), a multidisciplinary methods of researching psychological features and individual properties of perception (volume, constancy, illusions, identification, etc.)²². In addition to those outlined, forensic psychological examination, including one conducted with the polygraph use, can also be included here. All of them make it possible to obtain information about individual perception characteristics, memorization and reproduction of information by a person. This is due to the fact that quite often during the investigation there is a need to refute the fact that a person gave false testimony unintentionally, for example, due to a bona fide mistake, tendency to exaggerate or suggest, etc.

Specifics of forensic psychological examinations conducted during pre-trial investigation of criminal offenses of the category we are researching, mostly

¹⁹ Про психіатричну допомогу: Закон України від 22.02.2000 № 1489-III // БД «Законодавство України» / ВР України. URL: <https://zakon.rada.gov.ua/laws/show/1489-14#Text>

²⁰ Husieva V., Oderiy O., Petrova I., Fomina T. Features of the investigation of premeditated murders committed by persons with mental disorders in the practice of Ukraine. *Amazonia Investiga*. 2021. № 10 (46). С. 109-112.

²¹ Вуйма А. Г. Використання спеціальних знань під час розслідування вбивства : дис. ... докт. філософії: 081 Право. Харків, 2023. С. 187-192.

²² Лозинська Ю. І., Шехавцов Р. М. Достовірність показань свідка та її з'ясування у кримінальному провадженні : монографія. Львів : Львівський державний університет внутрішніх справ, 2020. 212 с.



Слова ключові: постępowanie karne, dochodzenie wstępne, wiedza specjalistyczna, świadomie fałszywe zeznania, analiza naukowa, specjalista, wariograf, świadek, ofiara.

consists in the fact that forensic expert was provided with video recordings of investigative (search) actions carried out in criminal proceedings in which they had the status of a witness or a victim. As a rule, in such proceedings, investigators submitted to the expert the question of whether the person was in a state of mental tension at the time of participation in procedural action, whether the investigator did not create conditions for him to formulate statements of a certain content; whether the examinee was subjected to psychological pressure; what are the features of a person's communicative activity at the time of participation in a procedural action; the question of providing an assessment of a person's non-verbal means of communication²³; finding out whether examinee demonstrates indicative-instructive behavior during investigative (search) actions²⁴; his inherent tendency to imitate an authoritative personality²⁵, etc.

As indicated in legal literature, appointment of forensic psychological analyses with the use of a polygraph is promising for establishing false testimony, although this approach has not yet acquired the status of being approved in investigative practice of domestic law enforcement agencies²⁶. At the same time, it is worth noting that, as noted in foreign literature, polygraphs have completely discredited themselves²⁷, in particular, due to the fact that they have the same accuracy indicators as "tossing coins"²⁸. This leads to the need to refute or confirm with data of investigative and judicial practice, in our opinion.

According to our analysis, it should be emphasized here that mostly all types of research (either conclusions of psychophysiological research, or a survey or certificates based on the results of polygraph tests) are not recognized as evidence, since the procedure for conducting such research is not entered into the Register of methods of conducting forensic examinations, and data on polygraph²⁹ examiners are not in the State Register of certified forensic experts. Instruction on appointment and conducting forensic examinations and researches on preparation and appointment of forensic examinations and expert researches are to obtain indicative information for the purpose of constructing investigative versions³⁰.

At the same time, it should be emphasized that currently in the practice of law enforcement agencies of many countries of the world, not only traditional lie detectors (polygraphs) are used, which measure certain physiological indicators that indicate a strong emotional reaction of the subject when he tells a lie (pulse rate, blood pressure, sweating, etc.), but also lie detectors

²³ Вирок Галицького районного суду м. Львова від 12.11.2020 р., у справі №461/4425/18 // Єдиний державний реєстр судових рішень : офіц. сайт. URL: <https://reyestr.court.gov.ua/Review/92848410>

²⁴ Вирок Галицького районного суду м. Львова від 07.12.2020 р., у справі №461/4416/18 // Єдиний державний реєстр судових рішень : офіц. сайт. URL: <https://reyestr.court.gov.ua/Review/93388161>

²⁵ Вирок Корольовського районного суду м. Житомира від 15.07.2020 р., у справі №283/457/17-к // Єдиний державний реєстр судових рішень : офіц. сайт. URL: <https://reyestr.court.gov.ua/Review/90420170>

²⁶ Mohilevskiy L., Husieva V., Perlin S., Chycha R., Shynkarenko I. Determinants and methods of diagnosing criminal proceedings participants false testimony in Ukraine. *Amazonia Investiga*. 2022. № 11(51). P. 75-76.

²⁷ Howgego J. The truth about lie detectors. *New Scientist*. 2019. №242 (3231). P. 18.

²⁸ Street C. N. H. Alled: Humans as adaptive lie detectors. *Journal of Applied Research in Memory and Cognition*. 2015. № 4(4). P. 335.

²⁹ Вуйма А. Г. Застосування поліграфу як непроцесуальна форма використання спеціальних знань під час розслідування вбивств. Розвиток науки та техніки: проблеми і перспективи: матер. міжнар. наук-практ. інтернет-конф. з нагоди відзначення Дня науки-2021 в Україні (м. Київ, 20 травня 2021 р.). Київ, Державний науково-дослідний інститут МВС України, 2021. С. 97-98.

³⁰ Інструкція про призначення та проведення судових експертиз та експертних досліджень та Науково-методичних рекомендацій з питань підготовки та призначення судових експертиз та експертних досліджень : затв. наказом Міністерства юстиції України від 08.10.1998 № 53/5 (зі змінами та доповненнями). БД «Законодавство України». ВР України. URL: <https://zakon.rada.gov.ua/laws/show/z0705-98>

that investigate cognitive processes using functional magnetic resonance imaging. That is, they do not study secondary emotional reactions that makes them practically not susceptible to the influence of possible attempts to deceive him, but also establish neurobiological correlates of lies and untruths, and not only their external manifestations, which makes his results more accurate. Therefore, we can make an assumption that someday such results will be recognized as evidence, but currently the polygraph use in criminal proceedings allows us to obtain only indicative information.

As for forensic telecommunications expertise, it is understood as a kind of engineering and technical expertise, the content of which is research by an expert on the basis of special knowledge in the field of electronics and telecommunications of systems, means, networks and their constituent parts, information transmitted, received, processed and contained by them factual data about the circumstances of the crime, which are important for criminal proceedings³¹. As our analysis of court practice shows, they are mostly appointed for the purpose of performing a competent analysis of information provided by mobile operators, in particular about base stations that provided communication in the coverage area of the operators' relay antennas, the type of connection (incoming, outgoing calls, SMS, MMS, GPRS, forwarding), date, time and duration of the connection, incoming and outgoing connections, calls of zero duration, identification features of the terminals in which the number was used, identification features of the terminal equipment (subscriber number of the SIM card, IMEI), identification features of the terminals with which communication sessions took place, information about the use of personal self-service cabinets with an indication of the IP addresses of the entry to the cabinets of the specified subscriber, information about receiving services according to the SIP, as well as about the IP addresses from which authorization was carried out, etc. In our opinion, there is no need to involve an expert to clarify issues of this kind, it would be sufficient to carry out such an analysis to involve a competent specialist, for example, to participate in the review of such information.

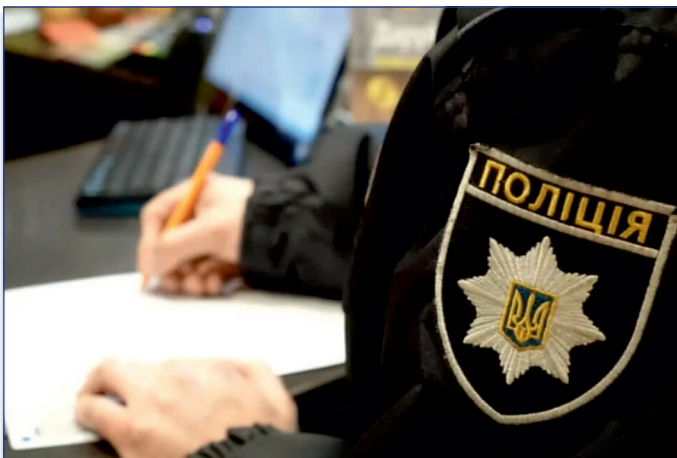
Conclusions. During pre-trial investigation of deliberately false statements by witnesses and victims, there is a need to involve forensic expert in the examination. Typical is appointment of forensic handwriting analysis, a forensic psychiatric examination, a forensic psychological examination, in particular with the use of a polygraph, forensic telecommunications examination, less often a technical examination of a document. Each of the outlined forensic examinations has its own specifics, which consists in the preparation of relevant materials that will be provided for a competent examination by forensic expert, objective assessment of the need for its appointment, in particular, with regard to clarifying availability of sufficient grounds, conducting specifics, etc.

In our opinion, this issue is quite complex and at the same time relevant, therefore it requires further multidisciplinary researches. Prospects for further research consist in determining peculiarities of implementation of other forms of specific expertise use, in particular, such as the participation of a specialist in investigative (search) actions, tactical operations, the involvement of a specialist to provide advisory and reference assistance, etc.

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³¹ Коршенко, В. А. Теоретичні та методичні основи судової телекомунікаційної експертизи : автореф. дис. ... канд. юрид. наук : 12.00.09. Харків, 2017. С. 15-16.



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