

WYKORZYSTANIE WIEDZY SPECJALNEJ W RAMACH DOCHODZENIA PRZESTĘPSTW, POPEŁNIONYCH W INSTYTUCJACH PENITENCJARNYCH UKRAINY

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Streszczenie. W przepisach artykułu naukowego autor bada możliwości wykorzystania wiedzy specjalnej podczas dochodzenia przestępstw, popełnionych w instytucjach penitencjarnych Ukrainy. Przeprowadza analizę w naukach kryminalistycznych proceduralne i nieproceduralne formy wykorzystania specjalnej wiedzy podczas dochodzenia przestępstw popełnionych w instytucjach penitencjarnych, opisuje podmioty wykorzystania specjalnej wiedzy w instytucjach penitencjarnych Ukrainy i ujawnia specyfikę wykorzystania przez podmioty specjalnej wiedzy podczas dochodzenia przestępstw, popełnionych w instytucjach penitencjarnych Ukrainy i proponuje autorską metodę udoskonalenia przepisów obecnego Kodeksu Postępowania Karnego Ukrainy w części uzupełnień definicją pojęcia wiedzy specjalnej.

Słowa kluczowe: przestępstwo, kryminalistyka, wiedza specjalna, instytucje penitencjarne, specjalista, ekspert, środki techniczne, nagrywanie wideo, urządzenia do wyszukiwania.

APPLYING SPECIAL KNOWLEDGE TO INVESTIGATING CRIMES COMMITTED IN PUNISHMENT EXECUTION INSTITUTIONS OF UKRAINE

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Annotation. In the provisions of the scientific article the author examines the possibilities of applying special knowledge to investigating crimes committed in punishment execution institutions of Ukraine, analyzes in criminal law procedural and non-procedural forms of applying special knowledge to investigating crimes committed in punishment execution institutions of Ukraine, characterizes subjects of applying special knowledge to investigating in PEI of Ukraine, discovers the peculiarities of subjects' applying special knowledge to investigating crimes committed in PEI of Ukraine and suggests the author's way of improving the provisions of the current Criminal Procedural Code of Ukraine in the part of the supplement by the concept 'special knowledge'.

Key words: crime, criminal law, special knowledge, punishment execution institutions, specialist, expert, technical means, video recording, search devices.

ВИКОРИСТАННЯ СПЕЦІАЛЬНИХ ЗНАТЬ ПРИ РОЗСЛІДУВАННІ ЗЛОЧИНІВ, ВЧИНЕНИХ В УСТАНОВАХ ВИКОНАННЯ ПОКАРАНЬ УКРАЇНИ

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Анотація. У положеннях наукової статті автор досліджує можливості використання спеціальних знань при розслідуванні злочинів вчинених в установах виконання покарань України. Проводить аналізувати у науці криміналістиці процесуальних та не процесуальних форм використання спеціальних знань при розслідуванні злочинів вчинених в УВП, характеризує суб'єктів використання спеціальних знань в УВП України та розкриває особливості використання суб'єктами спеціальних знань при розслідуванні злочинів вчинених в УВП України та пропонує авторські шлях удосконалення положень чинного Кримінального процесуального кодексу України в частині доповнення визначенням поняття спеціальні знання.

Ключові слова: злочин, криміналістика, спеціальні знання, установи виконання покарань, спеціаліст, експерт, технічні засоби, відео зйомка, пошукові прилади.

Setting the problem in general and its connection with important scientific or practical tasks. In the process of solving and investigating crimes in punishment execution institutions (further – PEI) specific knowledge, skills and abilities are required for the people who conduct investigation, which they often lack. For this reason other people possessing special knowledge are involved in the process of investigation, they are as a rule: a specialist, an interpreter, an expert, a teacher, a psychologist, a doctor. It is reasonable to mention that the end of 2012 in Ukraine is marked with active discussions among scientists, practical lawyers and other interested public representatives, concerning the new Criminal Procedural Code of Ukraine (further – CPC), adopted in April 2012 by the Verkhovna Rada of Ukraine coming into force. It is the very procedural law that changes fundamentally the system of criminal proceedings of Ukraine and can become a guide of further reforming legal system in the part of procedural legislation, the system of law enforcement bodies, judges and other fields of public relations, aimed at the most efficient ensuring protection of constitutional rights and freedoms of a man and a citizen. In the new CPC the approaches to application of experienced people's special knowledge as an evidence source have also changed, which offers the sides of criminal proceedings much more possibilities of its application in proofs of forensic examination institution (*Tkachenko N.M.*). In our opinion, it should be marked that the concept 'special knowledge' nowadays is of debatable character. It is promoted by lack of legislative definition of the 'special knowledge' concept in CPC of Ukraine, where the legislator indicates only the purpose and the subject of special knowledge application.

A lot of national and foreign scientists – proceduralists and criminalists devoted their works to studying the problems of special knowledge application. They include V.D. Arseniev, V.P. Bakhin, I.V. Basysta, R.S. Bielkin, T.V. Varfolomiyeva, A.I. Vinberg, V.G. Goncharenko, I.V. Hora, O.M. Zinin, A.V. Ishchenko, V.Ya.Koldin, N.I.Klymenko, V.A.Kolesnyk, V.K. Lysychenko, V.M. Makhov, Yu.K. Orlov,

I.L. Petrukhin, O.R. Rossynska, M.Ya. Segai, T.V. Sakhnova, O.V. Selina, S.A. Sheyfer, O.R. Shliakhov, O.O. Eisman, M.P. Yablokov and others.

Formulating the purposes of the article (setting the task). Our research is aimed at discovering and studying the possibilities of special knowledge application to investigating crimes committed in PEI of Ukraine. According to the purpose set research tasks are as follows: analysis of establishing in criminal law procedural and non-procedural forms of applying special knowledge to investigating crimes committed in PEI of Ukraine; characteristics of subjects of applying special knowledge to investigating crimes committed in PEI of Ukraine; discovering the peculiarities of subjects' applying special knowledge to investigating crimes committed in PEI of Ukraine; suggesting the author's way of improving the provisions of the current Criminal Procedural Code of Ukraine in the part of the supplement by the concept 'special knowledge'.

Presenting main material. As professor N.I. Klymenko rightly observes, the main thing in the development of forensic tactics is applying modern forensic knowledge to investigatory and forensic practice, for the knowledge an investigator and an expert possess is valuable only when they are used in practical activity (*Klymenko N.I., 2010, p.28*). We believe it is worth agreeing to professor I.V. Basysta's point of view that nowadays the expert in criminal proceeding can be called a person possessing special knowledge and skills of using technical or other means, who can give consultations concerning the problems requiring appropriate special knowledge and skills during pre-trial investigation and trial (*Basysta I.V., Tulyk Kh.I., 2017, p.24*). However, the analysis of the above mentioned opinions of the leading scientists criminalists enable to make a conclusion that there is no clear definition of 'special knowledge' concept on either legislative or scientific and doctrinal level. The current Criminal Procedural legislation of Ukraine that does not reveal the content of 'special knowledge' concept proves it. Articles 69 and 71 of CPC of Ukraine say about using scientific, technical or other special knowledge and skills. (*Criminal Procedural Code of Ukraine*).

In our view, special knowledge implies acquired knowledge, skills and abilities which are constantly improving and are used in any field of human activity, gained in the process of special education, experience and practical activity (except for professional knowledge of the people solving and investigating crimes), necessary for quick and full crime solution and investigation, as well as for considering a case in court.

Professor I.V. Hora notes quite accurately, that forensic and procedural literature distinguishes procedural and non-procedural forms of using special knowledge. In our opinion, such a criterion as an evidence of the result of applying special knowledge to pre-trial investigation and considering criminal proceeding materials should be the basis of dividing forms of applying special knowledge to criminal legal proceedings (*Hora I.V., 2013, p.211*). Special knowledge in solving and investigating crimes in PEI is also used in two forms: procedural and non-procedural.

The procedural form of applying special knowledge to investigating crimes committed in PEI of Ukraine is regulated by the norms of Criminal Procedural Code of Ukraine. The procedural form of applying special knowledge in PEI includes: participation of a specialist in investigatory actions for promoting to detect, withdraw, fix and study evidence, forensic examination, participation of a teacher, psychologist or a doctor during cross-examination of juveniles or minors.

The non-procedural form of applying special knowledge in PEI is a legal system of rules which does not contradict the law, but is not established in CPC of Ukraine, and it concerns applying special knowledge to investigating a crime and trying a case at the initial and the next stages. The non-procedural form of applying special knowledge in PEI includes particularly specialist's consultation, operational research.

Main purpose of applying non-procedural forms of special knowledge in correctional institution consists in investigator's receiving from a specialist criminally important timely information enabling to choose correct order, time and place of taking procedural action, to select its participants, scientific and technical means, to choose tactical techniques and to correctly orientate in the current situation.

A consultation is a scientifically substantiated advice, given by a specialist (orally or in written form). For example, a specialist- criminalist in PEI can consult the person who investigates using these or other scientific and technical methods and means.

It should be mentioned that operational researches imply a form of specialist's assistance rendered to the person undertaking investigation in conducting different researches (criminalistic, chemical, biological, etc.), which are stated in the report.

For more detailed research of the problem concerning application of special knowledge to investigating crimes committed in PEI, we consider it to be worth characterizing the process of applying special knowledge by the subjects participating in investigating crimes in PEI more in detail.

First, it is expedient to begin with the analysis of such a subject of special knowledge as a specialist. A specialist in criminal proceedings is a person who possesses special knowledge and skills of using technical or other means and can give consultations during pre-trial investigation and trying a case requiring appropriate special knowledge and skills. A specialist can be involved in rendering direct technical assistance (photographing, making up schemes, plans, drafts, selecting samples for making examination, etc.) by the sides of criminal proceedings during pre-trial investigation and by the court during the trial. The sides of criminal proceedings have the right to solicit for involving a specialist or using his explanations and assistance (pp.1-3 art.71 CPC of Ukraine) (*Criminal Procedural Code of Ukraine*).

Procedural form of applying a specialist's special knowledge in PEI consists in specialist's participation in investigative actions. When conducting investigative actions in PEI, a specialist is involved, as a rule, in examining the place of an event, dead body, premises, objects and documents, in cross examining, in carrying out investigative experiment. Workers of expert subunits of Ministry of Internal Affairs, experts of forensic medical expert institutions, workers of medical service of PEI, teachers of PEI secondary and vocational schools can be specialists.

In a number of cases the law clearly requires compulsory participation of an expert of a definite field in conducting certain investigative actions. So, art.238 of CPC of Ukraine stipulates, that examining dead body by investigator or procurator requires participation of a forensic medical expert or a doctor, if it is impossible to involve a forensic medical expert in time; art.226 of CPC of Ukraine stipulates, that a juvenile or a minor is cross-examined in the presence of a legal representative, a teacher or a psychologist, if necessary – a doctor (*Criminal Procedural Code of Ukraine*).

Second, an interpreter is the next subject possessing special knowledge. As far as an interpreter in criminal proceedings is concerned, the analysis of provisions of CPC of Ukraine shows that an interpreter's participation depends on the stage of criminal

proceedings, investigator, procurator or trial on condition that the interested person enjoys his right to involve an interpreter, and there are grounds provided for by law. According to p.3 art.29 of CPC of Ukraine, the investigator, judge, court, procurator ensure the participants of criminal proceedings, who don't know or know the state language not enough, the right to give evidence, solicit, make complaints, speak at a trial in their mother tongue or any other language they know, using if necessary an interpreter's services by order provided for by this Code. According to p.1 art.68 of CPC of Ukraine, if the translation of explanations, evidence or documents is necessary in criminal proceedings, the sides of criminal proceedings or the investigator, judge or court involve the appropriate interpreter (surd-interpreter) (*Criminal Procedural Code of Ukraine*). It is worth mentioning that according to the data of investigative practice and our empiric research, an interpreter as a subject possessing special knowledge is not practically involved in investigating crimes committed in PEI (*Batiuk O.V., 2013, 320 p*).

Third, it is especially important to involve a specialist-criminalist in examining the place of event before entering the records in the Single Register of pre-trial investigations, when it is necessary to detect the imprints left in the place of event and fix them in proper time. So, the provisions of p.3 art.214 of CPC of Ukraine can be procedural grounds for applying special knowledge in this case. The given norm establishes as an exception the possibility of examining the place of event in urgent cases before entering the records in the Single Register of pre-trial investigations. Such records are entered just after the examination is completed.

Examining the place of event without involving a specialist-criminalist can result in loss of evidence because of a number of factors influencing the investigation of crimes in a correctional institution.

For example, a convict B. was visited by a convict S. in the room for meat processing and began claiming on returning debt out of time. Making sure that the convict B. cannot return the debt, S. made an attempt to take violent actions of sexual character. Being highly excited, B. gave several blows to the head of S. with the knife for meat processing, as a result, S. died of wounds on the spot. After that, aiming at hiding tracks of the crime, B. secretly took the dead body, hid in the snow and did away with the tracks of the crime. On the same day absence of S. was discovered, during check-up measures were taken to search the convict, including the examination of the correctional institution premises by colony workers, but they had no results.

In the course of examination the main task of a specialist-criminalist is revealing, fixing and withdrawing evidence. Other tasks are also performed together with this specialist-criminalist taking general tasks of examining the place of events into consideration.

We are convinced such tasks should include:

- helping the investigator to define the way of committing the crime and the criminal's actions;
- singling out the imprints and objects concerning the event investigated from all imprints and objects;
- conducting preliminary examining traces, objects, materials, substances, probably left by the criminal, for receiving researching information;
- eliciting the reasons and conditions promoting the crime;

- participating in summing up the examination aimed at suggesting versions directed towards solving and investigating crimes.

In our opinion, a specialist-criminalist establishes the way of committing a crime according to the results of detecting and examining imprints in the place of event. These traces enable to determine the type and character of the actions taken by a person. Knowing the way of committing a crime helps to determine the direction of searching other imprints and objects (for example, the fact of using firearms, seized from PEI workers or hand-made in PEI, determines the direction of shot place search, a person shooting, cartridge-case, etc.).

In most cases of committing crimes on PEI premises (dwelling or industrial area) a great amount of fingerprints and footprints are found during examination. We think the task of a specialist-criminalist is to single out those imprints which could be left by a criminal, taking the way of committing the crime and the character of actions into account.

Examining imprints and other objects in the place of event and the mechanism of their formation can give the information necessary for search "hot in the trail".

Taking part in investigative actions in PEI a specialist-criminalist very often uses means of fixation (photo-, cinema-, video equipment, tape-recorders), search devices, means of detecting and withdrawing fingerprints, footprints and other material evidence. As practice of studying PEI equipment (photo-, video devices) shows that there is no special criminalistic technology in the majority of PEI of Ukraine. Even if there is such, PEI workers make substantial mistakes when using it, lacking skills of operating it, laying the blame on technical device or component parts to it. For example, the following report is significant, which was made by a correctional institution worker, when examining the place of event: "In the course of examining the place of the event photos were taken, but it was impossible to develop the photos as the film turned out to be faulty".

Photographing to fix the course of investigative action a specialist-criminalist uses different methods and techniques in a correctional institution, the choice of which depends on the type of investigative action and condition of taking it.

Photographing in a correctional institution is used mostly when examining the place of event, aimed at discovering and fixing the information of circumstances of committing criminal offence. According to p.3 art.237 of CPC of Ukraine, the procurator can invite specialists to take part in examination, aimed at receiving assistance with the problems requiring special knowledge.

The record of investigative action indicates photographing. In addition to that, camera model, general view of the place of event, the type of lighting, the method of photographing, amount of photo taking is indicated.

Along with photographing in PEI, videoing is widely used to fix the course and result of investigative action. Application of video is especially pressing when examining the place of event, dead body. For example, videoing the place of event when investigating the escape case enables to make up a picture of events happened, and also to fix the situation of the place of event, and at the next stages of investigation to exclude the possibility of changing evidence by both crime witnesses and the accused.

Videoing in PEI is used to fix objects, phenomena in dynamics; to fix the process of discovering material evidence by an investigator and a specialist; to fix the objects of substantial extent, etc.

Video-recording as evidential means of fixing the course of investigative action is used by decision of the person conducting investigation, and all the participants of investigative action are reported about it (art.107 CPC of Ukraine) (*Criminal Procedural Code of Ukraine*).

Before examining the place of event, the person conducting investigation together with an expert-criminalist makes up the plan of examination in advance.

This plan must say what exactly will be fixed with the help of video-recording, succession of fixing main stages of investigative action, its episodes, objects, which need to be fixed. The plan also should take approximate points and methods of videoing into consideration.

In our view, the record of investigative action, during which video was used in PEI, must include: indication about video-recording application, time of its start and informing the participants of investigative action about it; information about technical means and conditions of video-record application, and also about the person who videoed, the mark about reproducing it by a participant, participants' statements saying that they are familiar with the record of investigative action and video-record, the mark of the person taking investigative action, about the time of completing video-recording.

Next particular form of applying special knowledge in PEI is non-procedural one. It enables to apply special knowledge in PEI which includes consultations and operational research, conducted by special subjects.

When examining the place of event a specialist-criminalist consults the person carrying out investigation and establishes a number of data about the suspected:

- whether he is acquainted with the victim (what the situation of the place of event, time and imprints in the place of event indicate);
- data about height, weight and other biological characteristics of the convict committing the crime (according the fingerprints, footprints);
- crime motives (injury character and situation can indicate the motive);
- psychological and social features of the personality according to the analysis of way of committing and hiding the crime (his abilities, skills, professions).

Operational research in PEI consists, as a rule, in determining drugs, psychotropic substances with the help of express-analysis. It is an examination – one of the forms of applying special knowledge – that implies an analysis on the instruction of investigator, judge or court according to the petition of the side of criminal proceedings, conducted by an experienced person (expert), having at his disposal material examination objects (material evidence) and also different documents, aimed at establishing actual data important for criminal proceedings.

The difference of examination from other forms of applying special knowledge consists, first of all, in the character of established facts. With examination the research results, as a rule, are not obvious and require scientific explanation of the person taking the examination. For example, the imprint discovered in the place of event, left by the suspect P., is established by the expert estimating the coinciding features of papillary patterns. The facts, established by a specialist examining the place of event, are of different character. Most often they are the direct result of applying scientific and technical means and don't need interpretation and special estimation. That's why the distinctive peculiarity of forensic examination is gaining actual data on the basis of scientific explanation, interpretation of research results.

Statistic data analysis of forensic practice and our empiric research show, that the most serious crimes committed by convicts in prison, who undergo expert research, are as follows:

1. crimes against life: intentional murder (art.115 CC of Ukraine), murder committed in the state of great emotional excitement (art.116 CC of Ukraine), murder exceeding the limits of necessary defense (art.118 CC of Ukraine);

2. crime against health (art.121-126, 127-129 CC of Ukraine);

3. illegal producing, manufacturing, buying, keeping, transporting, sending or selling drugs, psychotropic substances or their analogies (art.307 CC of Ukraine); illegal producing, manufacturing, buying, keeping, transporting, sending drugs, psychotropic substances or their analogies without selling (art.309 CC of Ukraine); illegal producing, manufacturing, buying, keeping, transporting, sending precursors (art.311 CC of Ukraine);

4. escape from prison or custody (art.393 CC of Ukraine) (*Batiuk O.V., 2013, 320 p*).

Conclusion of the given research. We suggest supplementing article 3 part 1 of the current Criminal Procedural Code of Ukraine with the point 18-1 of the following content: special knowledge is acquired knowledge, abilities and skills, which are constantly improving and are used in any field of human activity, gained in the process of special education, experience and practical activity (with the exception of professional knowledge of the people who make discovery and do investigation), necessary for quick and complete discovering and investigating a crime, and considering a case in court.

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