

Methods of investigation of anthropogenic non-verbal information in criminal proceedings

Методи дослідження антроподжерельної невербальної інформації в кримінальному провадженні

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Key words:

anthropogenic non-verbal information, criminal proceedings, innovative research methods, methods of investigation, conventional methods and means of research.

Ключові слова:

антроподжерельна невербальна інформація, кримінальне провадження, інноваційні методи дослідження, методи дослідження, традиційні методи і засоби дослідження.

In recent decades, the study of the practice of crime prevention has revealed the need to develop new methods and tools for criminalistical examinations. The scientific attainments in the field of physiology and psychology, particularly covering non-verbal information and other behavioural characteristics of an individual, are an important source of criminalistical knowledge and a mean to improve criminal proceedings. Criminalistics does not determine the “new methods and tools for criminalistical examination”, however, this issue is considered in the framework of practical requirements, directly depending on the assigned tasks.

The practice of criminal proceedings demonstrates that the use of non-verbal information is an integral part of the work of investigators/prosecutors/judges/experts. At the same time, analysis and evaluation of legal practice show that investigators/prosecutors/judges/experts apply the outdated methods of work with non-verbal information in the vast majority of cases. That significantly blunts effectiveness of the acquisition of non-verbal information along with the formation of evidentiary basis in the course of criminal proceedings. This is preconditioned by the insufficiency of criminalistical techniques in the framework of non-verbal information as a criminalistical category, its classification, along with the application of tactical techniques for its perception, fixing and use. Moreover, the contemporary system of scientific knowledge of non-verbal information, which had been formed within criminalistics, gives sufficient theoretical background for a detached criminalistical teaching about the application of non-verbal information within criminal proceedings that will give the occasion to create effective models and tactical decisions to apply non-verbal information in the course of pre-trial investigation and judicial proceedings.

However, modern criminalistical studies do not appropriately cover the issues of the methodology of non-verbal information. The majority of the newest legal research efforts is focused on practical task solving and legal novelties analysis. However, the drawback of the systematic research on the application of non-verbal information is explained by deficiency of the general theoretical basis for the proposed solutions and conclusions. The study of methodological aspects of the application of non-verbal information is important as it allows to expand the range of scientific knowledge in general. The theoretical and methodological level of the research of non-verbal information refers to the comprehension of the problems of philosophical, humanitarian, natural, technical and other sciences that, in various aspects, highlight the concept, types and patterns of the information processes, including the information support for criminal proceedings.

The technical and scientific progress of the XX–XXI centuries has led to the development of the new methods and tools for criminalistical investigation. In their efforts, scholars continue to create, improve and implement various innovations that provide solution to the tasks of criminal proceedings. Thus, the necessity of understanding of the concept of the “new methods and tools for criminalistical examination” and its application arises. In general, the new methods and criminalistical examination tools can be defined as all that what has been lately created and synthesized. In this context, the methodological and organizational

issues of criminalistical scientific research and certain problems of methodology of crime detection have been recently covered¹.

When formulating the concept of the new methods and criminalistical examination techniques, the content of the aforementioned concept and its influence on the furtherance of criminalistics should be taken into account. In such a way, new criminalistical techniques and research methods are new knowledge (methods and tools) borrowed from other branches of sciences, applied in criminalistical examination when identifying, preventing, investigating and detecting crimes, on condition that this method or tool is neither recognized by criminalistics, nor adopted as a regular practice, however it may be implemented.

These circumstances have required a profound analysis of the theoretical and empirical material to improve both theoretical and methodological approaches to the non-verbal information and recommendations on its application within pre-trial investigation and judicial proceedings and certain theoretical-methodological and practical aspects.

The need for a full picture of the methodology of non-verbal information in the framework of criminal proceedings has resulted in the subject matter of this research. Therefore, the objective of this article is to form the idea of the examination methods for non-verbal anthropogenic information, applied in criminal proceedings.

The problems of the methodology of scientific knowledge, in particular the question of how to actually study the circumstances that had occurred in the past, are key for Criminalistics, and therefore require the relevant scientific approach and synthesis of knowledge from other fields of science. Several criminalistical techniques, such as psychological examination of personality and properties and the methods of psychological impact, were adopted from Psychology².

The effectiveness depends on the chosen method. The election of the appropriate and effective research methods contributes to the reliability of the data. In turn, the election of the tactically wrong method will bring inaccurate or incomplete data. The absence of any method leads to examination failure or false data.

The scientific method is a set of methods for laying down the parameters, structure and other characteristics of the researched objects, phenomena, facts or processes³. The definition of the method is based on the consistent patterns of the objective and subjective and serves as a technique for the study of the cognition processes⁴. However, the objective consistent pattern transforms into the integrated system of methods, techniques and instruments only through the use of certain methods turning the cognitive activity into a specific mechanism.

The concept of the composite application of criminalistical research methods is reflected in scholarly literature. For instance, R. Belkin emphasizes that none of the proof techniques circles the content of a particular investigation (search) procedure, though it may play either a primary, or a secondary role⁵. The authors of the "Theory of evidence within the Soviet Criminal Procedure" state that none of the cognition methods, applied in investigative practice, cannot be absolutized. Merely a system of cognition methods can guarantee learning the truth that is learnt in the course of criminal investigation and judicial proceeding⁶.

In the context of theory of criminalistics, certain methods are considered separately. However, none of the methods is used apart from the others and their practical application is only possible in the systems of criminalistical techniques, which meet the particularities of the tasks, objects, and conditions of criminalistical examination⁷.

¹ Іщенко А.В. Методологічні та організаційні проблеми розвитку криміналістичних наукових досліджень: дис. ... докт. юрид. наук: спец. 12.00.09 / Українська академія внутрішніх справ. Київ, 1996. 415 с.

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² Шепітько В.Ю. Психологія судової діяльності: навч. посібник. Харків: Право, 2006. С. 12.

³ Scientific method / Merriam-Webster, Incorporated: Dictionary. URL: <https://www.merriam-webster.com/dictionary/scientific%20method>.

⁴ Ackoff R. L. Scientific method: Optimizing applied research decisions. Wiley, 1962. 464 p.

⁵ Криміналістика: учебник для вузов / Т.В. Аверьянова, Р.С. Белкин, Ю.Г. Корухов, Е.Р. Россинская; под ред. Р.С. Белкина. Москва: НОРМА, 2002. 990 с.

⁶ Теория доказательств в советском уголовном процессе / отв. редактор Н.В. Жогин. 2-е изд., испр. и доп. Москва: Юрид. лит., 1973. 736 с.

⁷ Крестовников О.А. Системно-деятельностный анализ методологии криминалистики: монография / под общ. ред. профессора В.Я. Колдина. Москва: Юрлитинформ, 2013. С. 23.

The examination of personality, which is conducted in the course of criminal proceedings, is provided by the means of verbal and non-verbal communication between the parties of the criminal investigation, regardless of their procedural status under the Criminal Procedure Code of Ukraine. Such a requirement stems from the statutes and regulations ensuring criminal proceedings which, in turn, ensure certain techniques of criminalist tactics, aimed to bring reliable data, which allows to detect all the circumstances of the relevant crime. Broadly speaking, the cognition of anthropogenic non-verbal information in the course of criminal proceeding should be considered through the lens of individual and especial cases of the objective reality perception. Therefore, scholars have designed a special methodology which includes a wide range of classification systems for the scientific methods⁸.

Criminalistics performs its tasks, functions and achieves its main goal applying various cognition and scientific methods. The concept of the methods of Criminalistics is an integral part of the general theory of science and its methodology. Conventionally, researchers divide the methods by the principle of generalization into three large groups: the general (dialectical) method of cognition⁹; general scientific methods¹⁰; special methods¹¹.

Moreover, there are other grounds for classifying methods which are recognized by many scientists¹². Consequently, according to the sources of origin, there are: criminalist, psychological, psychophysiological, tactical and logical methods; according to the objectives of the investigative situation, there are identifying and searching methods; certain methods depend on the working versions, etc.¹³.

Dialectical logic is the philosophical basis of Criminalistics, on the basis of which, the methods of Criminalistics were created and justified¹⁴. The following methods of criminalist psychological examination have practical significance: psychological analysis of criminal case materials; psychological analysis of a crime; psychological situation analysis; method of psychoanalysis; test method; method of conversation¹⁵. Criminalist methods are constructed with the help of special knowledge with regard to the specifics of the object, subject, conditions, objectives and procedural form of application, due to the fact that this knowledge is adapted, and in some cases transformed¹⁶.

The provisions, set forth in the aforementioned works, indicate that the issue of methodological support of criminal proceedings is unquestionably pressing. However, at the same time, the non-verbal information re-

⁸ Семенов В.В. Процессуальные и криминалистические проблемы использования невербальной информации при расследовании преступлений: дисс. ... канд. юрид. наук: спец. 12.00.09. Саратов, 2003. С. 45.

⁹ Захарцев С.И. Дialectический метод в оперативно-розыскной деятельности. Юридическая наука: история и современность. 2012. № 7. С. 62–69.

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¹⁰ Maxfield M.G. Basics of research methods for criminal justice and criminology. Cengage Learning, 2011. 335 p.

Салтевский М.В. Собираение криминалистической информации техническими средствами на предварительном следствии: учебное пособие. Киев: КВШ, 1980. 111 с.

¹¹ Nickell J., Fischer J.F. Crime science: methods of forensic detection. University Press of Kentucky, 2013. 312 p.

Салтевский М.В., Лысов Н.Н. Криминалистическая фотография, кинематография и видеозапись в правоохранительной деятельности. Киев, 1993. 146 с.

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¹² Bradford L.W., Samuel A.H. Research and Development Needs in Criminalistics. Law Enforcement Science and Technology III. 1970. 12 p.

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¹³ Цільмак О.М. Класифікація методів криміналістики у відповідності до рівнів пізнання. Публічне право. 2016. № 1. С. 185–192.

¹⁴ Салтевський М.В. Криміналістика (у сучасному викладі): підручник. Київ: Кондор, 2005. С. 37.

¹⁵ Шепітько В.Ю. Психологія судової діяльності: навчальний посібник. Харків: Право, 2006. С. 12–13.

¹⁶ Цільмак О.М. Класифікація методів криміналістики у відповідності до рівнів пізнання. Публічне право. 2016. № 1. С. 185–192.

mains out of view of the researchers studying the methodology of criminal proceedings. The ideas, embodied in the scholarly efforts, have not given due consideration to the complex of theoretical, methodological and practical issues, associated with the use of anthropogenic non-verbal information in the course of criminal proceedings, rendering tactical decisions and the conduct of legal proceedings.

The examination of anthropogenic non-verbal information is expedient in accordance with the following groups of methods and means:

1. Sensitive-rational methods which combine both sensory and rational cognition of anthropogenic non-verbal information within criminal proceedings. The sensitive-rational techniques are: observation; verbalization; comparison; experiment; simulation; description, etc. In the course of the application of the sensitive-rational methods, the use of technical means has merely auxiliary character and is not of crucial significance;
2. Technical methods, which are based on perception of anthropogenic non-verbal information with the help of equipment (devices and mechanisms, etc.) within criminal proceedings. In other words, the technical facilities and methods, applied for the examination of anthropogenic non-verbal information, are designed on the ground of the knowledge of natural, technical and other sciences. These methods expand the human perception abilities, reduce the level of subjectivity of the findings and results, as well as increase their reliability and completeness. Application of a polygraph and its modifications is the most well-known examination method. Moreover, the scientific and technological achievements contribute to development of other technical cognition methods and means, which, however, have not earned wide recognition in the act of studying the anthropogenic non-verbal information;
3. The mixed methods combine sensitive and rational cognition together with the simultaneous application of technical means in the course of the study of anthropogenic non-verbal information. These methods are the rational combination of the two aforementioned which are used depending on the type of anthropogenic non-verbal information, criminal proceedings, the personality of the offender, the crime and criminalistical scenes and other circumstances along with subjective and objective factors.

It is important to stress that there are no sharp contradictions between the sensitive-rational, technical and mixed methods and means of cognition of anthropogenic non-verbal information. All these methods are fundamentally one object of study – a party of criminal proceedings in the unity of social, biological, physiological, anatomical and psychological aspects. The differences in the subject matter of the examination (exogenous and endogenous anthropogenic information) are mainly caused by the particularities of the methods of scientific cognition. However, the use or non-use of technical facilities during the research of anthropogenic non-verbal information may result in various legal, social and tactical implications, which may change the conditions, procedure and significance of the examination process¹⁷. Therefore, these methods should be considered as relatively independent, however they can be eventually combined, depending on the objective and subjective factors.

The cognition of anthropogenic non-verbal information is an integral part of the activity of the prosecution party when searching, identifying, collecting, recording, studying and applying criminalistical information. The process of cognition of anthropogenic non-verbal information is intended to provide evidence and measures for crime prevention, investigation and detection which are based on the techniques that have been developed theoretically (by criminalistics and other areas of knowledge) and empirically (as a result of law enforcement).

According to V. Shepitko, criminalistical innovations are the contemporary methods, techniques, technologies and instruments which were designed to optimize the crime investigation and judicial procedures, as well as to improve the quality of law enforcement activities¹⁸. A. Tsylnak is of the opinion that verification of criminalistical versions cannot be based on the application of normative and unauthorized means, methods and techniques and cannot be verified with the administration of invalid methods¹⁹.

¹⁷ Семенов В.В. Процессуальные и криминалистические проблемы использования невербальной информации при расследовании преступлений: дисс. ... канд. юрид. наук: спец. 12.00.09. Саратов, 2003. С. 47.

¹⁸ Шепитько В.Ю., Авдеева Г.К. Инновации в криминалистике и их использование в деятельности органов досудебного следствия. Щорічник українського права: зб. наук. праць. Харків: Право, 2012. № 4. С. 527.

¹⁹ Цільмак О.М. Основні завдання органів досудового розслідування на етапах побудови та перевірки криміналістичних версій. Криміналістика і судова експертиза: міжвідом. наук.-метод. зб. / Мін'юст України, КНДІСЕ; редкол.: А.В. Янчук, О.М. Олійник, О.Г. Рувін та ін. Київ, 2015. Вип. 60. С. 201.

With contribution to the development of criminalistical provisions on the administration of anthropogenic non-verbal information, the innovative classification of the methods and means of perception and decoding the anthropogenic non-verbal information in the course of criminal proceedings should be represented as follows:

- conventional methods and means of researching the anthropogenic non-verbal information (sensitive-rational, technical and mixed methods and means of cognition);
- innovative methods of researching the anthropogenic non-verbal information (verification, validation and psychophysiological method).

Summary

The article is devoted to the methods of investigation of anthropogenic non-verbal information in criminal proceedings. Two groups of methods and means of research of anthropogenic non-verbal information were considered. The article covers the scientific development of the investigation methods of anthropogenic non-verbal information in the course of criminal proceedings.

Анотація

Стаття присвячена методам дослідження антроподжерельної невербальної інформації в кримінальному провадженні. Виділено дві групи методів і засобів дослідження антроподжерельної невербальної інформації. Проаналізовано наукову розробленість методів дослідження антроподжерельної невербальної інформації в ході кримінального провадження.

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