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## Criminalistics in law enforcement: possibilities, nowadays realities and problems

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## Criminalistics in law enforcement: possibilities, nowaday realities and problems

Accumulation of forensic knowledge, of course, changes not only the paradigm of general theoretical foundations of forensic science, but also the views on its opportunities in law enforcement. The major trends of this problem have been reflected in the works of Ukrainian professors and V. H. Honcharenko, V. Yu. Shepitko, M. P. Yablokov, et al. We will try to understand the grounds to these positions.

As practice shows, the vast majority of deadlock or abnormal situations in any sphere of law enforcement are generated usually equally; on the one hand, by non-systematicness and collision of legal norms and gaps in legislation, on the other, by incompetence, unprofessionalism of the lawyers themselves as they do not delve into the nature of social relations that require legal regulation through the application of the law. They misunderstand or intentionally disregard legal norms, objective nature regularities, modern technologies of law enforcement activities. In other words, the quality of law enforcement activities as an important component of the regulating mechanism and characteristic of the legal state depends not only on its proper legal-normative and executive-technological equipment, but mainly on the fact how it is done professionally.

Herewith, it seems, from the viewpoint of the professional level of a law enforcer, reflections and molded on their basis worldview position are unlikely grounded and indisputable. The law enforcer's worldview position implies „the main role for the

knowledge of the law and recommendations in legal science branches as to their application in the situations that require a legal solution. It is also essential to have the knowledge about the possibilities of non-legal science branches, which develop modern technologies for searching, recording and using of any evidentiary facts”<sup>1</sup>. The professional level of a law enforcer equally depends on the fact if s/he possesses:

- 1) adequate knowledge of appropriate branches of the law and basic legal science branches according to their competence;
- 2) knowledge of other legal sciences, especially those developing modern technologies for law enforcement;
- 3) necessary experience, abilities, perfected skills of using these two blocks of knowledge to solve legal issues.

It appears that this conclusion has been confirmed by practice. Otherwise, if the major role in determining a professional level of the lawyer is devoted exclusively to the knowledge of the law and legal science branches according to their specialization, and, thus, the importance of the other two components is underestimated, then virtually every law university graduate having a diploma with honors or appropriate excellent grades would have grounds to claim for occupying an “awaited” high position at once after graduation and he would not have “to go the way from a lieutenant to a general”. This would level the meaning of prosecutors’ class rates, judges’ qualifying classes, state employees’ ranks, etc. as criteria of legal officers’ experience, discipline, level of professionalism and prerequisites for their claiming for occupying an appropriate level of responsibility and complexity of tasks of the position. In terms of a natural psychological desire of any individual for professional growth, as well as the perspective of progress,

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<sup>1</sup> Яблоков, Н. П. Теоретические и практические аспекты применения данных криминалистики в правоприменительной и иной юридической деятельности / Н. П. Яблоков // Вестник криминалистики. – 2009. – № 3 (31). – С. 16.

self-development of any kind of human activity the best option, contributing to both of these processes, is employee's possession of both – the quality of professional knowledge and up-to-date technology, which optimize their use, and the ability to quickly develop and fulfill them in practice.

Thus, proper possession of the complex of the above-mentioned three blocks of knowledge and skills means achievement of the contemporary level of legal professional knowledge that is the guarantee of law enforcement correctness, and, therefore, achievement of the objectives of regulation. In shaping lawyer's professional level, the essential role belongs to legal science of practical direction, which develops advanced technologies for collecting, researching, evaluating, and using of legal facts, and thus participates (or may participate) in truth cognition, contributes to proving in the situations that require adjustment by means of the law.

That science, in particular, is criminalistics. Not being a branch of the law, forensic science in the Ukrainian law and in the law of other countries, within which it as a science overpassed a common Soviet period of its formation and intensive development, occupies an important place in enforcement activity, especially in the sphere of criminal justice.

Hereby, in late 90s of the 20<sup>th</sup> century – beginning of the 21<sup>st</sup> century there appeared not only some isolated publications, but a publication 'wave', which testified that forensics had entered new frontiers of knowledge and new spheres of use of its scientific product. Using its own means and methods, forensics helps proving and, thus, becomes a necessary attribute of the law<sup>2</sup>. „Forensic science is no longer only for detection and investigation of

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<sup>2</sup> Ароцкер Л. Е. *Использование данных криминалистики в судебном разбирательстве уголовных дел* / Е.Л.Ароцкер. – М.: Юрид. лит., 1964. – 223с. Варфоломеева Т.В. *Защита в уголовном судопроизводстве* / Т.В.Варфоломеева. – К.: Ин-т адвокатуры при Киевском ун-те им. Тараса Шевченко, 1998 – 204с.

crimes... Forensics serves the task of solving, investigating, *pre-trial investigating* and preventing of the crime”.

V. H. Honcharenko, V. Yu. Shepitko, M. P. Yablokov see even wider horizons for using criminalistics, and this appears to be quite reasonable. Thus, according to V. H. Honcharenko, „for more than a century of its existence, forensic science has significantly escalated the scope of investigation and criminal justice system as a whole... Modern forensics has become a peculiar and unique research entity through which natural-scientific and technical achievements of the world society have been transformed and used to establish legally significant facts in the various fields of science and practice, going beyond combating delinquency, criminal justice, and it more substantively extends to all social relations, requiring specific situational regulation”. V. Yu. Shepitko has a similar opinion that „criminalistics has moved beyond the cycle of criminal science”. He, like M. P. Yablokov emphasizes that „forensics primarily provides professional training of inquirers, forensic, operational and investigative personnel, prosecutors. At the same time, the knowledge of criminalistics is equally necessary for judges, attorneys, employees of private detective and security agencies, bank employees and other legal professions<sup>3</sup>. Due to M. Caberle, B. Holysta, V. Shepitko, the knowledge may be used in civil and administrative proceedings and during various court procedures, in complete fixing of legal actions by using technical means; according to V. H. Honcharenko, it may be used in the notary, penal-executive, commercial, banking activity, literary studies, linguistics, archeology, art studies, etc.

At the same time, there are thorough scientific researches, including monographs and doctoral theses directed at adaptation of forensic means, techniques and methods for using them during the trial investigation by state prosecutors, defense attorneys and by the court. Moreover, in forensic science there has been a positive trend in the development of particular methods of judicial

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<sup>3</sup> *Криминалистика: Учебник / отв. ред. Н.П.Яблоков. – 3-е изд. – М.: Юристъ, 2005. – С. 21.*

investigation intended for a public prosecutor, a defense attorney and the court<sup>4</sup>. But, unfortunately, in aspect of using forensics data in other spheres of the law enforcement we witness a stalemate situation; in the Ukrainian science there is only a statement of this possibility.

While, on the other hand, arsenal of its knowledge (technical, tactical and methodical) and the use of forensic technologies with a variety of evidential facts, which forensics has developed during the time of its existence, as well accumulated experience of this knowledge use in evidence-based activities are actually in demand, they can be used and are being used in other, than criminal justice, spheres of law enforcement.

Forensics capabilities can be used particularly successful primarily in other kinds of procedural activities as they all have the same cognitive (gnoseological) basis i.e. proving. In particular, in *civil, economic and administrative proceedings*, forensic knowledge and technologies, first of all, can be successfully used at trial for appointing and conducting forensic examinations, while interacting with the expert; for requesting (withdrawing) free and selected experimental samples of handwriting or text writing, goods, documents for signature identification, etc.; in materials preparation for examination; in evaluation of expert's opinion; in selection based on affiliation, examination and investigation of written and material evidence; in obtaining witnesses' testimonies, or explanations of the parties and third parties.

In modern conditions of formalization and algorithmization of various kinds of evidentiary-cognitive activity, not only in criminal proceedings, and constant improving of the work of forensic technologies with any legally significant information, criminalistics opportunities are being increased in other spheres of law enforcement. In particular, the work of appropriate forensic technologies with evidential facts can be formed in certain algorithms

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<sup>4</sup> Когутич І. І. Використання знань та засобів криміналістичної тактики і методики під час розгляду кримінальних справ у суді // І. І. Когутич. – Львів: Тріада плюс, 2009. – С. 273 – 348.

depending on the type of legal facts that require establishment and legal issues that require solution. For example, on the basis of cognition of the form and essence of various civil law or commercial agreements, mechanisms of their making and implementation, obligations, testaments and other legal actions being in dispute, forensic technology identification and analysis of legally relevant facts, suitable for acceptance and justification of appropriate legal decisions, may be formed.

Various means of forensic tactics can be used in administrative and legal activities, actually in all spheres of public relations as proceedings in cases of administrative offenses have much in common with investigation proceeding and trial of criminal cases. In particular, collecting of evidence in cases of administrative offenses is carried out by gathering of explanation, conducting of examination, investigating of physical evidence and documents, examining of premises and facilities, as well available there objects and documents, which belong to an entity or a private entrepreneur, personal examining of things and vehicles that an individual possesses, etc. In this case, during proceedings on administrative offenses, it certainly appears to be helpful not only tactical forensic techniques and recommendations for carrying out the abovementioned administrative and legal actions, but also possession by a law enforcer skills – the so-called „forensic (investigative and analytical) thinking” i.e. evaluation of the collected evidence and the situation that emerged in the case; determination of proving directions, identification of unknown circumstances and range of evidence due to which they can be set, as well means of proving; analysis and evaluation of the collected evidence in terms of their adequacy for making the right legal decisions.

Similarly, for any legal activity are important law enforcer’s skills and abilities to establish psychological contact with other participants of this activity in a variety of situations, to identify (diagnose) the truth or falsehood of their statements, to elicit honesty and scrupulosity, or falsity of their taken up attitude, as well

to receive from them legal and other information necessary for solving cases.

Surely, law enforcer's ability to properly evaluate legal situations that arise in their course, and, accordingly, choose the most optimal ways (methods) of action in carrying out their professional functions for the proper solving of disputes, conflicts and negotiation processes is important for efficiency, ergonomics of legal activity. Eventually, the skill to assess the situation adequately is significant in any practice of any relationships and communication with people. And just the product of criminalistics is theoretical and practical foundations of the situational approach to the investigation as a whole, and in the course of separate investigative actions in order to solve effectively the final objectives of the investigation or tactical interim ones. This approach can be very useful to improve the efficiency of any other, than criminal proceeding, legal activity.

The use of the situational-operational approach in the planning and organizing of the investigation as a whole and reflecting on separate investigative actions and other actions is practically a part of the process of thinking, which is conditionally called „forensic thinking” or „forensic worldview”<sup>5</sup>. The thinking algorithm based on the situational approach can be used not only to forensic, but also in any other legal activity. Thus, due to M. P. Yablokov, none of the legal sciences, except forensics, contributes to the formation of the lawyer's analytical thinking<sup>6</sup>. Having these thinking skills, lawyers, regardless of the nature of their activities, can better detect, analyze and use any evidentiary facts, explore their material, documentary and other sources; they can tactically and correctly communicate with people during examinations, gather-

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<sup>5</sup> Holyst Brynon *Kryminalistyka*. – Wydanie XI zmienione. – Warszawa: LexisNexis, 2007. – s. 37.

<sup>6</sup> Яблоков, Н. П. Теоретические и практические аспекты применения данных криминалистики в правоприменительной и иной юридической деятельности / Н. П. Яблоков // Вестник криминалистики. – 2009. – № 3 (31). – С. 22.

ing of explanations, surveys, interviews in the course of various types of legal proceedings, in arranging processes, corporate relations, etc.

Forensic means, techniques and methods can definitely help (and are helping) in ensuring the safety of different types of commercial, industrial, business activities detecting and preventing all types of offenses and crimes committed by the entity personnel themselves or with their help, as well outside criminal influences. Thus, in practice, legal departments and security department in the structure of public joint stock companies, private joint stock companies, banks always closely collaborate, sometimes forming a common structural unit.

For example, in any economic production activity, designed by criminalistics guidelines on the detection and disclosure of thefts in various economic sectors, on prevention manufacturing substandard products and a range of other economic crimes would be useful for most entities as they can prevent and deter similar crimes, using their own means. In fact, such forensic recommendations are actually a universal informational support for any professional activity that aims at identifying and detecting complex schemes of preparation for the theft, ways of their committing and concealment of traces and signs of their commitment; schemes of non-recorded surpluses of raw materials or finished products and their appropriation; schemes of manufacturing substandard products and their falsification, including pharmaceuticals, alcohol and so on.

Forensic science offers various means, techniques and methods for studying the individuality of the subjects who are involved in the criminal justice system or have their own interest there. First of all, we mean the polygraph. Besides, according to M. Yablokov, in order to determine the reliability of people who are selected to work, the methods of forensic handwriting diagnostics may appear to be effective as they can diagnose typological (socio-demographic and psychological) traits of the future workers. Based on the study of handwriting samples of a person

being diagnosed, this technique allows you to determine his/her psychopathological state, presence of various diseases; dependence on gambling, etc.<sup>7</sup> It requires thorough knowledge of handwriting and can be done, for example, by handwriting experts on employers' request who want to diagnose their employees.

Forensic knowledge, techniques and methods are particularly relevant for those types of legal actions that investigate a variety of forged documents; then a legal officer should demonstrate appropriate knowledge and skills of applying forensic rules for documents and exhibits; the knowledge of signs and traces of different ways of forgery, methods and means for their detection.

All of the above leads to the conclusion that it is both irrationally and not logistically<sup>8</sup> for most types of legal practice and forensic science itself, as well from the viewpoint of regulations efficiency achievement to be scornful and skeptical, to reject or ignore forensic analytical thinking, as well as other forensic means, techniques and methods for detection and investigation of the evidence-based information in legal activities of other kinds rather than criminal-procedural. This is a waste of opportunities of the forensics scientific product.

Instead, the following realities correspond to the above conclusion: introduction and implementation of forensic means, techniques, methods and algorithms for the detection and investigation of evidence-based information in legal activities of other kinds rather than criminal-procedural, is still in the Rubicon area of getting the ball rolling, and, obviously, could be better.

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<sup>7</sup> Орлова В. Ф. *Судебно-почерковедческая диагностика: учеб. пособие для студ. Вузов* / Орлова Валерия Федоровна. — М.: Юнити-Дана, 2006. — 160с.

<sup>8</sup> Thus, from the perspective of enterprise management, logistics aims at optimizing the costs and an efficient production process, distribution and related services both within one enterprise and an enterprise group. It is considered as a strategic management of material, financial, informational flows in the process of procurement, supply, transportation, sale, and storage of materials, inventory parts and finished goods.

Who or what is to blame? The reason for this state lies in criminologists, forensic science and legal education. In fact, when teaching criminalistics still not enough attention is paid to reveal and demonstrate the advantages of the forensic thinking algorithm and other universal forensic technologies of collecting and tactically thoughtful using of evidence-based information in other kinds of legal activity. On the other hand, students-lawyers primarily of civil law schools are mostly focused that their professional future is not in the field of criminal justice, and when they begin studying a forensic science course, they usually do not realize expediency of mastering forensic knowledge, its applicability and usefulness for future civil, administrative, notary or other activity. In this case, professors-criminologists should not be self-assured and should not rely on students' creative thinking, self-interpretation and their successful adaptation of received forensic knowledge in solving legal situations not in the sphere of criminal justice. Therefore, the leading criminologists' appeal makes sense as they revealed the essence of this and related issues and trends. They notify their colleagues about the need for teachers to help students develop the ability to select the appropriate forensic techniques, means and methods for collecting evidence-based information, their tactically correct use in proving and law enforcement, depending on the situation that has arisen and requires legal resolution.

It seems that the conclusion about the need of changing approaches to teaching forensic science can hardly be denied, rather the opposite – one can easily find arguments that affirm its reason. Thus, forensic means, techniques, methods, algorithms, and technologies are a kind of peculiar goods, a scientific product in terms of economics. The same laws of economics, management, marketing, logistics and other economic categories pertain to it like to the other products. Therefore, from the standpoint of *marketing* (activities related to ensuring the availability of necessary goods and services to the right audience, in the right place, at the right time)

and *logistics*<sup>9</sup> (the science and activities related to organizing of rational process of promoting goods and services from the producer to consumers), the very forensic science (and criminologists) as the manufacturer of its product must take care of promoting its toolkit of practical legal experience of its customers – practicing lawyers – at the market.

Consequently, the task of criminologists is to reveal, demonstrate, and promote forensics capabilities in any sphere of law enforcement actively and constantly. Accordingly, we should make appropriate adjustments to teaching criminalistics, avoiding fundamental restructuring of the science and its curriculum. It is especially important to do in the civil law schools where in the context of specializations being prepared, the main emphasis is placed on training specialists in the civil-economic or constitutional-administrative cycle. Of course, such informational „promotional” activities should be conducted the most actively in the process of teaching the forensic science, but one should not ignore it in conferences presentations, in articles and scientific papers. In this way, it is necessary to convince the scientific community, especially of the civil, constitutional, and administrative cycles that the role of forensics in the formation of professional legal knowledge of university graduates and law enforcement in general should not be ignored.

It is the criminologists who can provide methodological assistance to judges, members of civil, commercial, administrative proceedings for active and purposeful implementation of forensic techniques and methods in their activities. And this assistance is actually being provided in some scientific-practical books and textbooks, as well as in the scientific research. For example, its recommendations are very useful for judges and investigators’ tactics when they appoint and evaluate the results of forensic examinations, particularly, when the investigator, the parties or the

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<sup>9</sup> Райзберг Б. А. *Современный экономический словарь*. – 5-е изд., перераб. и доп. / Б.А Райзберг, Л.Ш. Лозовский, Е.Б. Стародубцева – М.: ИНФРА-М, 2006. – 495 с.

court have difficulty with the wording of questions on solving the expertise, the assessment of expert's opinion<sup>10</sup>. Especially valuable are the manuals, which show the scope of the relevant classes, certain types and subtypes of forensic examination i.e. it is shown their possibilities in resolving certain categories of criminal, civil and commercial cases, as well depending on individual situations. In this case, the investigator, the court, and other subjects of the proceedings receive a methodological support for necessary objects, which should be provided for an expertise or their availability and access to them for the expert examination should be ensured; in preparation and provision of these objects it may be necessary to commit other proceedings (or apply for their commitment), to know the requirements of their packing and sending to the expert, etc. In this context, it is worth mentioning some research papers devoted to this problem<sup>11</sup>, which have been published, for example, in Russia.

The above-mentioned considerations appear to lead to the following conclusions: 1) having different forensically relevant information, forensic means, techniques and methods of obtaining and investigating the evidence can be successfully used in other than criminal justice, law enforcement spheres; 2) this requires good knowledge of forensic science, possibility of its means, techniques and technologies; 3) therefore, the task of criminologists is to reveal, demonstrate, and promote forensics capabilities in any sphere of law enforcement actively and constantly.

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<sup>10</sup> *Експертизи у судовій практиці: наук.-практ. посібник* / ред. В. Г. Гончаренко; Київський НДІ судових експертиз, Академія адвокатури України. – 2-ге вид. перероб. і доп. – К.: Юрінком Інтер, 2010. – С. 32 – 49.

<sup>11</sup> Волчецкая Т.С. Криминалистические аспекты административного расследования / Т.С.Волчецкая, В.Н.Хорьков // Вестник криминалистики. Вып. 3 (15) 2005. – С.6–19.

## STRESZCZENIE

### Kryminalistyka w stosowaniu prawa: możliwości, realia, problemy dnia

W artykule analizują się współczesne możliwości, stan, tendencje i problemy użycia kryminalistyki w innych, oprócz kryminalnego sądownictwa, zakresach stosowania prawa. Uzasadnia się, że w odpowiedzi na wysiłek niektórych prawników poniżyć rolę kryminalistyki w edukacji i praktyce prawnej, konieczne reagować dynamicznością, elastycznością i przemianą podejść dydaktycznych przy jej wykładaniu, żeby aktywnie ujawniać, demonstrować, propagować jej możliwości w dowolnym zakresie stosowania prawa.

## ABSTRACT

### Criminalistics in law enforcement: possibilities, nowadays realities and problems

In the article it has been analyzed modern possibilities, conditions, tendencies and problems of the use of forensic knowledge in other spheres of law enforcement, except criminological justice. It has been shown that in spite of some lawyers' attempts to underestimate the role of criminalistics in legal education and practice, it is necessary to react quickly and change didactic approaches to teaching forensic science in order to reveal, demonstrate, promote its possibilities in any legal sphere.