

Case Investigation Based on Indirect Evidence: The Method by M. Ye. Yevheniev

Anatolii Starushkevych *

* PhD in Law, Docent, Kyiv SRIFE, Kyiv, Ukraine, ORCID: <https://orcid.org/0000-0001-7659-6646>,
e-mail: stargdoc@gmail.com

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It has been proven that the basis of the method for case investigation according to indirect evidence developed by the Soviet criminalist M. Ye. Yevheniev is the concept of indirect evidence; dissemination of the concept was due to the political situation of the 1930s and 1940s; in particular, the desire of investigative bodies and prosecutors to obtain confessions of guilt from the accused in cases of "terrorist acts" and "political conspiracies", which at that time was considered the main and decisive evidence. Method positive qualities have been specified: logical structure, simplicity of perception by practitioners, consideration of traditional factors of suddenness and counteraction to investigation, use of activity and integrated approaches, algorithmicity and phasing of crime investigation. Handling direct evidence is not challenging for the investigator: it is indirect evidence that lead to difficulties. The accused should be carefully interrogated about each piece of evidence, and all his/her explanations thoroughly checked. It has been found that the method developer did not disclose types of circumstantial evidence connections, paid insufficient attention to peculiarities of evaluating indirect (circumstantial) evidence. At the same time, it has been determined that M. Ye. Yevheniev's method is a significant step towards the formation of the doctrine about methods of criminal offenses investigation and the development of theoretical bases of current forensic methodology. The Article Purpose is a scientific analysis of the method of investigating a case based on circumstantial

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evidence developed by M. Ye. Yevheniev in order to clarify its role in the development of forensic doctrine about the methods of investigating criminal offenses. The following methods of scientific cognition were applied while research: observation, comparison, abstraction, analysis, synthesis, modeling, etc.

Keywords: *cognition method in criminalistics; investigation method; investigation of criminal offenses; history of criminalistics; forensic methodology; indirect evidence; circumstantial evidence.*

Research Problem Formulation

From our perspective, scientific research in which origins, prerequisites, process of formation and development of the studied subject are analyzed within certain historical time spans and local territorial ranges, given the general historical and cultural contexts¹, is considered to be more successful and precise. It is in this context that we viewed case investigation method based on indirect evidence developed by M. Ye. Yevheniev.

In 1930–1940s, a totalitarian system was fully formed in the Soviet Union: the opposition had been liquidated, and one party government gained uncontrolled power. Party power quickly fused with authorities, resulting in creation and spread of the administrative-command governance system. The struggle in party leadership strengthened sole authority, leading to mass repressions accompanied by “purging” both in the party itself and in the state apparatus.

All these processes took place simultaneously with ideological review of many scientific fields. The administrative-command system of management harshly directed the development of the legal system, as well as the state apparatus in general, towards its own strengthening and further centralization. A characteristic feature of the legal system at that time was the priority of Soviet Union legislation over the republican one². Similar trends accompanied reorganization of the Prosecutor’s office, court, and the police. Prosecutorial bodies were taken away from the People’s Commissariat of Justice and subordinated to the Prosecutor’s Office of the USSR; unified the judicial system; public order protection bodies were introduced into the system of state security bodies; in addition, the latter, along with executive management functions, also began to fulfil judicial ones. Political trials began in the state which had a demonstrative nature and a substantial role in determining the sentence played materials of investigative

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- 1 Старушкевич А. В. Історична періодизація (історико-хронологічний аспект) «методів розслідування» кримінальних правопорушень. *Криміналістика і судова експертиза*. 2021. Вип. 66. С. 313. DOI: 10.33994/kndise.2021.66.30 (date accessed: 22.01.2023).
 - 2 Музыченко П. История государства и права Украины :учеб. пособ. 6-е изд., испр. и доп. Киев, 2008. С. 413. URL: <http://irbis-nbuv.gov.ua/ulib/item/UKR0001348> (date accessed: 22.01.2023).

bodies usually obtained with gross violations of procedural rules³.

Deformation of the criminal procedural legislation conditioned the elimination of the democratic principles of the judiciary, neglect of the principles of orality, publicity and competition. Repressive and punitive bodies acted according to their own instructions, contrary to rules of criminal procedural law. Since 1937, with the permission of the supreme Party authority, physical influence had been applied to suspects of crime commission⁴ in the practice of the People's Commissariat of Internal Affairs. The development of criminal law was accompanied by expansion of types and subjects of crimes, more severe punishments⁵.

During this period, in the USSR textbooks on criminalistics, investigative bodies were addressed with "political tasks": *"Criminal repression blows must be quick and efficient. To be able to quickly solve a crime, expose a disguised class enemy, show her/his true counter-revolutionary face to masses and impede his/her harmful activities in a timely manner: these are demands that the party and the government put forward to investigative agencies"*⁶.

Criminalistics is becoming criminal policy tool: *"Defining criminology as*

*a technical and applied science, we must at the same time emphasize its efficiency and inextricable connection with practice, which make this science the most flexible criminal policy tool,"*⁷ and further: *"It is clear that we are talking about criminalistics based on our theory and practice, that is, the Soviet criminalistics"*⁸.

The authorities explained the lagging behind the development of the criminalistics science from investigative practice, the problems of legal education, solely by "malicious activity": *"The lagging of criminalistics from Soviet investigative practice was not accidental. It is explained by harmful activities of people's enemies in the field of law. These criminals, who tried to eliminate Soviet law for counter-revolutionary purposes, implemented the same 'instruction' in relation to criminalistics: it was made less important. Legal journals did not publish articles on criminalistics, new scientific personnel of criminalists were not trained by research and training legal institutes, and criminalistics course had even been removed from the curricula of legal institutes for several years. All this, undoubtedly, affected the development of Soviet criminalistics and created a disrespectful attitude towards it among some lawyers"*⁹.

3 Музыченко П. Оp. cit. С. 413.

4 Іванов В. М. Історія держави і права України : навч. посіб. Київ, 2003. Ч. 2. С. 90–91 ; Idem. Історія держави і права України : підручник. Київ, 2013. Ч. 2. С. 583. URL: http://kul.kiev.ua/doc/IDPU_Ivanov.pdf (date accessed: 22.01.2023) ; Шифротелеграмма И. В. Сталина секретарям обкомов, крайкомов и руководству НКВД — УНКВД о применении мер физического воздействия в отношении «врагов народа» от 10.01.1939 г. № 26/ш (док. № 8) / Фонд Александра Н. Яковлева. URL: <https://www.alexanderyakovlev.org/fond/issues-doc/58623> (date accessed: 22.01.2023).

5 Захарченко П. П. Історія держави і права України : підручник. Київ, 2005. С. 309–312. URL: <http://irbis-nbuv.gov.ua/ulib/item/UKR0001080> (date accessed: 22.01.2023).

6 Бобров Н. А., Винберг А. И., Голунский С. А., Громов В. И., Зицер Е. У. и др. Криминалистика. Техника и тактика расследования преступлений / под ред. А. Я. Вышинского. Москва, 1938. С. 10–11.

7 Бобров Н. А., Винберг А. И., Голунский С. А., Громов В. И., Зицер Е. У. и др. Оp. cit. С. 3.

8 Ibid. С. 7.

9 Ibid. С. 9–10.

Therefore, criminalistics becomes a hostage to political ambitions of the ruling party, a tool for resolving issues of the class struggle; moreover, the theory for its development must be only Soviet, that's why any foreign borrowings are inadmissible, and previous ones necessitate substantial adaptation. The Soviet criminalistics term is being used as opposed to *bourgeois criminalistics*, but with the remark that "even the technical techniques of criminalistics, borrowed by us from bourgeois criminalistics, possess a **special quality** in our conditions"¹⁰.

The translated editions of foreign theorists and practitioners in criminalistics, which were widespread at the time in the USSR, were recognized as *secondary* and *minor*, and their authors: *reactionary and bourgeois: Translations of several secondary, minor research papers of reactionary bourgeois authors had been published: V. Hai, Shneikert, Anushata and others.*"¹¹ The most *reactionary* is heritage of criminalists of Western Europe leading countries: "During the post-war period, the Italian and German forensic literature displayed signs of extreme reactionism, obscurantism, signs of the Middle Ages, terrible dullness, degradation of criminal science. These developments coincided with the occurrence of the fascist coup. Fascism criminal policy is reflected, obviously, in the use of forensic means. Most frequently means of fascism criminal policy are those that have nothing to do with science, but are not even masked with the help of scientific terminology. These include provocation, ordered search, use of criminals' 'services', torture in fascist torture chambers, etc."¹².

The following recommendations are provided as to the use of "bourgeois"

criminalists' work in criminalistics: "Investigative work is political work, and political science is a science designed to serve investigation success. It is possible to use the scientific and technical information developed by bourgeois criminalists, but at the same time it is necessary to identify and resolutely expose the reactionary line of development of bourgeois criminalistics and all the pseudo-scientific methods of identifying and investigating evidence recommended by bourgeois researchers"¹³. Therefore, expanding the indirect evidence concept in investigative and judicial practice set out in the research paper by the "bourgeois" proceduralist William Vilz *The Experience of Indirect Evidence Theory Illustrated by Examples*¹⁴, A. Ya. Vyshynskiy (the ideologist of Stalinist justice) thought that this theory should be implemented in a "special way" in conditions of Soviet realities.

A. Ya. Vyshynskiy's adherence to indirect evidence concept can be explained by the fact that at that time, even with the help of physical influence, it was sometimes not possible to force individual accused of "terrorist activities" or "political conspiracies" to slander themselves or other detainees. The investigation was not capable of providing any direct evidence of criminal activities of such persons to the courts, because it did not exist. Instead, the concept of indirect evidence provided Stalin's prosecutor A. Ya. Vyshynskiy with a tool with which mere hints at alleged criminal activity confirmed "terrorist acts" and "political conspiracies" that did not actually exist.

At one of the political trials, A. Ya. Vyshynskiy noted in his speech: "No

10 Бобров Н. А., Винберг А. И., Голунский С. А., Громов В. И., Зицер Е. У. и др. *Op. cit.* С. 8.

11 *Ibid.* С. 9.

12 *Ibid.* С. 40.

13 Винберг А. И., Шавер Б. М. *Криминалистика : учебник.* Москва, 1940. С. 7.

14 Уильз У. *Опытъ теории косвенныхъ уликъ, объясненной примѣрами* : пер. съ 3-го изд. Москва, 1864. 251 с.

sane person can ask questions like that in cases of government conspiracy. Thus, we have a number of documents on this. But even if there were none, we would still believe that we have the right to charge relying on statements and explanations of the accused and witnesses and, if you wish, on indirect evidence. In this case, I have to refer at least to such a brilliant proceduralist as a distinguished old English lawyer William Wiles, who in his book 'The Experience of Circumstantial Evidence Theory' asserts how strong indirect evidence is and how indirect evidence is often much more convincing than the direct one¹⁵.

In one of his speeches during trial, A. Ya. Vyshinsky accurately explains how the prosecution should be built solely on the basis of only indirect evidence: "We will be told that some of the defendants <...> were not caught red-handed, that there is only indirect evidence against them. Yes, precisely indirect evidence <...>. But indirect evidence is often no less convincing than so-called direct evidence. It is this kind of indirect evidence — real evidence—that we have in this case"¹⁶, and further:

"The presence of only indirect evidence in a case poses huge procedural challenges, but they are inevitable, they must be considered and overcome. Thus, there is only indirect evidence, individual lines, individual remarks, fragments of opinions or facts in this case.

All these pieces and fragments must be collected together, compared with each other and with other facts, analyzed and synthesized, and they should be unified into a single system, one harmonious whole. Harmoniously

*combined into a system, indirect evidence grows into a terrible, inescapable force, turns into a chain of evidence surrounding the accused with a deaf wall, which is impossible to break through, it is impossible to go anywhere. But for this, the evidence itself must be flawless and harmonious, logically related <...> with all its links"*¹⁷.

Additionally, in the procedural literature of that time, there was an opinion that the refusal of the accused to testify, as well as the fact that he/she provided misleading testimony, can be viewed as indirect evidence of her/his guilt¹⁸.

Therefore, Stalin's justice in cases of "terrorist attempts", "political conspiracies", "espionage", etc. only entailed the necessity to "choose the criminal", and then she/he had to admit his/her guilt, oftentimes under conditions of applying physical violence against her/him. However, if such a confession did not take place, then the defendant's guilt was proved in court by indirect evidence, because such cases were usually group cases, so it was always possible to interrogate relevant "witnesses" or refer to the fact that the defendant was abroad for a certain time, where he/she was recruited by the intelligence of the bourgeois state or where she/he had a meeting with representatives of the opposition of Stalin's entourage.

All these factors contributed to the fact that at the end of the 1930s, M. Ye. Yevheniev attempted to develop a holistic forensic method for investigating a case based on indirect evidence, referring

15 Как они боролись против Ленина. Речь Государственного обвинителя Прокурора СССР тов. А. Я. Вышинского. Заседание 28 января ; по изд. Процесс антисоветского троцкистского центра (23—30 января 1937 года). Москва, 1937. С. 211 / Б-ка Михаила Грачева. URL: http://grachev62.narod.ru/Tr_proc/chapt34_42.htm#chapt35 (date accessed: 22.01.2023).

16 Вышинский А. Я. Судебные речи. 4-е изд. Москва, 1955. С. 58. URL: <https://library.khpg.org/files/docs/1359741502.pdf> (date accessed: 22.01.2023).

17 Ibid. С. 182.

18 Мотовиловкер Я. О. Показания и объяснения обвиняемого как средство защиты в советском уголовном процессе. Москва, 1956. С. 17.

to the research paper of A. Ya. Vyshinsky's favourite "bourgeois" proceduralist William Vills *Experience of Indirect Evidence Theory...*¹⁹, A. Ya. Vyshinsky's famous at that time speech in the Semenchuk case²⁰ and investigative practice of the Ukrainian SSR.

Analysis of Essential Researches and Publications

In the 1920s and 1930s, several foreign forensic manuals were published in the USSR, which authors considered advantages and disadvantages of using the indirect evidence concept during investigation of crimes, in particular by H. Shneikert²¹ and A. Helvig²², who in the *Modern Criminalistics. Crime Investigation Methods* manual devoted an entire chapter to methods of exposing a suspect with

the help of: indirect evidence that *relates to a suspect*; indirect evidence obtained *through witnesses*; indirect physical evidence.

In the 1920s, the pioneer of Soviet criminalistics I. M. Yakymov formulated a common approach to crime investigation that relied on indirect evidence²³, and V. I. Hromov demonstrated possibilities of using direct evidence while investigation of criminal crimes in multiple papers²⁴.

For that reason, considering historical foundations of forensic methodology in the 1980s, I. O. Vozghrin wrote about the book by M. Ye. Yevheniev: "*In addition to the general statement about the role of planning in crime investigation, this paper reflected the already known provisions of forensic methodology theory,*"²⁵ although he emphasized that this book "*studies complex problems of the methodology of investigating*

19 Уильз У. Оp. cit.

20 Вышинский А. Я. Оp. cit. С. 147—190. URL: <https://library.khpg.org/files/docs/1359741502.pdf> (date accessed: 22.01.2023).

21 Шнейкерт Г. Тайна преступника и пути к ее раскрытию. (К учению о судебных доказательствах) / пер с нем. Москва, 1925. С. 26 ; Idem. Введение в уголовную технику: руководство для школ и курсов по подготовке работников милиции и уголовного розыска / пер. с нем. Москва, 1926. С. 148, 155.

22 Гельвиг А. Современная криминалистика. Методы расследования преступлений / пер. с нем. Москва, 1925. С. 82—93.

23 Якимов И. Н. Практическое руководство к расследованию преступлений. Москва, 1924. С. 167—171 ; Idem. Криминалистика. Уголовная тактика. Москва, 1929. С. 161—168. URL: <https://sci-lib.biz/kriminalistika-pidruchniki/kriminalistika-rukovodstvo-ugolovnoy-tehnike.html> (date accessed: 22.01.2023) ; Старушкевич А. В. Розроблення методів розслідування злочинів у 20-х роках минулого століття (на прикладі «загального методу розслідування злочинів» І. М. Якімова). *Криміналістика і судова експертиза*. 2022. Вип. 67. С. 249—260. DOI: 10.33994/kndise.2022.67.26 (date accessed: 22.01.2023).

24 Громов В. Дознание и предварительное следствие. Теория и техника расследования преступлений. Москва, 1928. С. 57, 63, 73, 85—88, 92, 114, 118, 132—134 ; Idem. Вещественные улики и научно-уголовная техника: пособие для органов расследования. 2-е изд. Москва, 1932. С. 6, 58, 69, 78, 79, 83 ; Громов В. Л., Лаговьер Н. Искусство расследования преступлений. Достижения и недочеты розыскной и следственной практики. Опыт анализа доказательственных улик : пособ для органов расследован. Москва, 1930. С. 5, 32, 35, 58—65, 78. URL: <https://cyberleninka.ru/article/n/iskusstvo-rassledovaniya-prestupleniy-izvlechenie> (date accessed: 22.01.2023).

25 Возгрин И. А. Криминалистическая методика расследования преступлений. Минск, 1983. С. 31—32 ; Idem. Научные основы криминалистической методики расследования преступлений : курс лекций. Санкт-Петербург, 1992. Ч. 1. С. 32—33.

crimes relying on indirect evidence”²⁶ in subsequent papers.

In the 1990s and 2000s, authors of individual papers only indicated contribution of M. Ye. Yevheniev to the development of crime²⁷ investigation methods without any analysis of the method developed by him.

Article Purpose

To analyze the method of case investigation based on indirect evidence developed by M. Ye. Yevheniev in the 1930s, trying to clarify its role in the development of forensic science about methods of investigation of criminal offences and forensic methodology as a component of modern criminalistics in general.

Research Methods

To fulfil this goal, the research applies methods of scientific cognition: observation, comparison, abstraction, analysis, synthesis, modeling, etc.

Main Content Presentation

Mark Yevhenovych Yevheniev (later known as M. Ye. Yevgeniev-Tish) graduated from the Faculty of Law of Kyiv Saint Volodymyr Imperial University (1912–1918), and then gained considerable experience in investigative practice: had worked for more than 10 years as a senior investigator, an investigator for the most critical cases, a prosecutor of the Prosecutor’s Office of the Ukrainian SSR (1922–1936), later as a senior consultant at forensic science institutions of the People’s Commissariat of Justice of the Ukrainian SSR/USR (1936–1941)²⁸. In 1940, he published the book “*Methodology and technique of crime investigation: a study guide on criminalistics for law schools and employees of investigative bodies*”²⁹ under the general editorship of Professor S. M. Potapov and with the recommendation of the Ukrainian Institute of Legal Sciences (Kyiv), where M. Ye. Yevheniev held the position of a senior researcher, and later: head of criminal law and procedure section.

26 Возгрин И. А. Введение в криминалистику. История, основы теории, библиография. Санкт-Петербург, 2003. С. 231. URL: <https://mybook.ru/author/igor-vozhgrin/vvedenie-v-kriminalistiku-istoriya-osnovy-teorii-b/read/> (date accessed: 22.01.2023) ; Idem. История зарождения и развития криминалистической методики расследования преступлений / Курс криминалистики : учеб. пособ. В 3 т. ; под ред. О. Н. Коршуновой. 2-е изд. Т. 2: Общие положения криминалистической методики. Методика расследования преступлений против личности. Методика расследования преступлений против собственности. Санкт-Петербург, 2016. С. 25. URL: https://bstudy.net/834520/pravo/istoriya_zarozhdeniya_razvitiya_kriminalisticheskoy_metodiki_rassledovaniya_prestupleniy_vozgrin (date accessed: 22.01.2023).

27 Белкин Р. С. История отечественной криминалистики. Москва, 1999. С. 369 ; Тищенко В. В. Корыстно-насильственные преступления: криминалистический анализ. Одесса, 2002. С. 38. URL: <https://coollib.com/b/425251-valeriy-vladimirovich-tishchenko-koryistno-nasilstvennyie-prestupleniya-kriminalisticheskiiy-analiz> (date accessed: 22.01.2023) ; Тищенко В. В. Теоретичні і практичні основи методики розслідування злочинів : монографія. Одеса, 2007. С. 45.

28 Иванов А. Н. Марк Евгеньевич Евгеньев-Тиш (к 120-летию со дня рождения). *Вестник криминалистики*. 2012. Вып. 2 (42). С. 102–106.

29 Евгеньев М. Е. Методика и техника расследования преступлений: учебное пособие по криминалистике для юридических школ и работников органов расследования / под общ. ред. проф. С. М. Потапова. Киев, 1940. С. 3.

In the preface to this manual, S. M. Potapov highlighted that *“in modern forensic literature, there is no study guide that quite exhaustively and in detail outlines methods of investigating crimes in investigative process, that is, in the way in which the criminal case investigation and investigators’ work usually unfold”*³⁰.

As stated by M. Ye. Yevheniev, investigation of criminal cases consists in search, detection, collection, research and evaluation of evidence³¹. To submit high-quality materials to the court, the investigator has to *“determine certain circumstances and facts in each case. During the preliminary investigation of crimes, these facts, firstly, must be established accurately and unerringly, and, secondly, each of them separately and all of pieces of evidence in their totality must generate sufficient confidence in the investigator, the prosecutor and the court that investigated crime was really committed and that it was committed by a particular person”*³². To establish a certain fact or a circumstance means to prove that this fact really exists or existed; that in the investigated case, it has only a certain significance and that it is connected in some specific way to other facts (circumstances) of this case. M. Ye. Yevheniev calls evidence the main component of the investigator’s work when handling criminal cases³³.

Developing this idea, M. Ye. Yevheniev emphasizes that *“in every criminal case there is an issue about the existence of crime and the accused’s guilt;”* in addition, the investigator proves these two main facts for each case: *“The fact of crime existence and the fact of its commission by the*

*accused. These facts must be established in a predetermined sequence”*³⁴. If at least one of these main facts is not determined in a case, it shall be the subject to dismissal. If the investigator fails to establish that a crime has been committed, the case is closed due to the absence of constituent elements of an offense. If the investigator determines that a crime was committed but does not provide sufficient evidence to prove that it was committed by a specific person, the case is closed due to insufficient evidence against that person³⁵.

According to M. Ye. Yevheniev, the investigator examines evidence by interrogating witnesses, victims, forensic experts, the accused, i.e. persons whose testimonies can assist the investigator in obtaining answers to the major questions related to the case. After collecting and organizing the necessary evidence, the investigator analyzes and evaluates each piece of evidence individually as well as in its totality. Ultimately, the investigator aims to prove whether a crime was committed and identify the individual responsible for it. In addition: *“In some cases, establishment of certain evidence directly leads to an answer to the main questions of the case: whether there was a crime and who committed it; in other cases, specific evidence establishment does not enable to immediately and directly get an answer to both of these questions or to one of them; in such a case, identified evidence is similar to an intermediate one, it does not immediately and directly prove a crime or the accused’s guilt but contributes to establishing other facts and helps to provide answers to major questions of a case”*³⁶.

30 Евгенийев М. Е. Оп. cit. С. 3.

31 Ibid. С. 258.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid. С. 259.

36 Ibid.

The evidence that immediately and directly proves the existence of any fact (in particular, the main facts of a case: a crime or the accused's guilt) is called *direct evidence*. Those pieces of evidence that do not immediately and directly prove the existence of any fact, but which (on the basis of the collateral facts established by them) lead to a conclusion about the existence of this fact (in particular, about crime existence and the accused's guilt), are called *indirect evidence*. The same evidence, depending on the nature of the fact established by it, can be direct and indirect³⁷.

As to evidence handling, M. Ye. Yevheniev stresses: *"Analysis, evaluation and handling of direct evidence does not cause any particular difficulties. If direct evidence is of good quality, if its accuracy does not raise any doubts, conviction about the fact validity, which existence is established with the help of this direct evidence, develops easily, immediately"*³⁸. While handling indirect evidence, conviction in authenticity of the facts established by it does not arise directly. It is a conclusion or inference that relies on reasoning and analysis, which accuracy depends both on the quality of the analysis of indirect evidence collected in the course of investigation and on the quality of indirect evidence itself. Therefore, *"it would be a mistake to believe that this somewhat reduces the value of circumstantial evidence in a criminal case; indirect evidence, dully collected, properly systematized, rightly researched and analyzed, acquires irrefutable evidentiary value"*³⁹.

From the above, M. Ye. Yevheniev states: *"Indirect evidence, which is not inferior to direct evidence in terms of importance and*

*strength, requires high-quality investigative work by the investigator. If a false conclusion about the existence of the crime or the guilt of the accused is inevitable in a case based on direct evidence of poor quality, then it is obvious that a false, incorrect answer to the main questions about the existence of the crime or the accused's guilt is inevitable in a case based on indirect evidence of poor quality,"*⁴⁰ at the same time emphasizing that dully collected circumstantial evidence and its impeccable good quality do not always guarantee proper resolution of a case on the merits (in contrast to a case based on direct evidence, where appropriate collection and study of direct evidence and its good quality fully ensure such a guarantee). Cases built on circumstantial evidence, in addition to proper collection of high-quality circumstantial evidence, also necessitate its rigorous examination, as well as obtaining accurate and valid conclusion on the basis of such analysis. Therefore, the methodology of investigating a case based on indirect evidence should consist of both evidence collection and analysis and evaluation of collected evidence⁴¹.

For convenience in handling circumstantial evidence, M. Ye. Yevheniev suggests combining them into two large groups: 1) indirect evidence of crime existence, 2) circumstantial guilt evidence. The first group includes circumstantial evidence in its totality and in combination with other case data on the basis of which a conclusion about crime commission is developed. The second group consists of indirect evidence in its totality and in combination with other data, which help to formulate a conclusion about crime commission by a particular person.

37 ЕВГЕНЬЕВ М. Е. Оp. cit. С. 262.

38 Ibid. С. 263.

39 Ibid. С. 264.

40 Ibid.

41 Ibid.

Further, M. Ye. Yevheniev logically explains that “an inaccurate conclusion about crime existence must inevitably entail an incorrect conclusion about the accused’s guilt”⁴². If on the basis of poor-quality indirect evidence or on the basis of a poor-quality analysis of collected indirect evidence, an inaccurate conclusion is made about the existence of a crime that was not committed, then “the conclusion that the crime was committed by a particular person will also be inaccurate because if there is no crime, then there is no one to blame”⁴³.

Working with indirect pieces of evidence, the investigator has to accurately determine which of them establish crime existence and which establish the accused’s guilt in a specific case; mixing or substituting these pieces of evidence may lead to erroneous conclusions and potentially result in judicial errors. In fact, it is not always easy to isolate circumstantial evidence of crime existence from indirect evidence of guilt, but “primarily it is always possible and necessary to do it”, which, for its part, “considerably facilitates analysis and evaluation of all pieces of evidence and prevents possible mistakes that often take place in practice”⁴⁴. What is more, a clear distinction between circumstantial evidence collected in a case allows the investigator to accurately establish whether all pieces of evidence are collected and whether it is important to supplement them with other, additional ones, as well as to avoid the danger of substituting evidence of crime existence with evidence of guilt and vice versa⁴⁵.

M. Ye. Yevheniev’s proposal to single out and summarize *conditions for accuracy*

of investigation of cases based on indirect evidence of crime existence” is constructive:

- 1) if existence of a crime is established using indirect evidence, the latter should be collected with such exhaustive completeness as to exclude any possibility of the existence of “any significant undetected refuting evidence”. Collected indirect evidence must be of such a good quality and examined with such thoroughness and utmost clarity that only one conclusion can be drawn from it;
- 2) if existence of a crime is established by indirect pieces of evidence, they must be causally linked to a committed crime, and at the same time testify to individual circumstances under which a crime was committed;
- 3) if the question of whether a crime has been committed is resolved on the basis of indirect evidence, circumstantial crime evidence available in a case should be separated from circumstantial evidence of guilt and analyzed individually and collectively. If, proceeding from such analysis, it is possible to conclude that the existence of a crime cannot be proven, this conclusion should be verified both on the basis of guilt evidence available in a case and other case data;
- 4) when analyzing and evaluating circumstantial evidence of crime existence, one should always check whether the specific evidence is not an artificial, mechanical result of unifying individual, isolated, unrelated circumstances that cannot have the weight of independent evidence;

⁴² Евгенийев М. Е. Опр. cit. С. 265.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid. С. 265—266.

5) when analyzing and evaluating indirect evidence of crime existence, it is vital to check whether this evidence is real or just supposed ⁴⁶.

Further, the researcher emphasizes that *"before solving the question of whether a crime has been committed, and if a crime has been committed, what exactly and for what reasons, the question of the accused's guilt cannot be resolved"* ⁴⁷.

Developing the above provisions, M. Ye. Yevheniev highlights that indirect evidence establishing the guilt of the accused can be facts (circumstances) that: 1) preceded crime commission; 2) accompanied it; 3) followed its commission. If indirect evidence of guilt available in a case is categorized into these three groups, after verifying the quality of each piece of evidence separately and each of evidence groups collectively, it is possible to simplify evaluation and analysis of these pieces of evidence ⁴⁸.

Indirect evidence of guilt preceding crime commission is considered by the researcher to be: 1) actions of the accused or other circumstances that may indicate his/her preparation for crime commission; 2) circumstances pointing to the accused's interest in crime commission (crime motives); 3) circumstances revealing her/his intentions to commit a crime (threats expressed by him, inducement of other persons to commit a crime, etc.).

The researcher calls indirect evidence of guilt *that accompanies crime commission* as following:

1) data on presence of the accused at the crime scene (testimony of witnesses who saw him/her at the crime scene;

fingerprints and shoeprints of the accused at the crime scene and on the surrounding object in this place; crime tools or other items that belonged to the accused and which were found at the scene; dirt, dust, paint, etc. on the clothes or body of the accused, identical to the dirt, dust, paint detected at the scene, etc.);

2) data about involvement of the accused in crime commission (traces of crime on the accused and on objects belonging to her/him: blood and semen stains on the clothes or body of the accused; blood stains on instrument of crime; establishing identity between traces left by instrument of crime and traces left by the same weapon found in the accused, etc.) ⁴⁹.

Indirect evidence, according to M. Ye. Yevheniev, are accused's actions aimed at concealing a crime, concealing or destroying crime traces, creating misleading (false) traces, incitement to providing false testimony, using fruits of a crime, the escape of the accused, her/his refusal to provide exculpatory evidence or provision of unconvincing evidence, etc. ⁵⁰.

Among indirect evidence, M. Ye. Yevheniev also singles out behavioural evidence, that is, actions and statements of the accused in connection with a crime charged against him/her ⁵¹.

The scientist suggests categorizing cases where guilt is established through indirect evidence into two types:

1) relying on indirect evidence, both crime existence and the accused's guilt are determined;

46 Евгенийев М. Е. Оp. cit. С. 270.

47 Ibid.

48 Ibid.

49 Ibid. С. 271.

50 Ibid.

51 Ibid. С. 271–272.

- 2) existence of a crime is established using direct evidence, and the accused's guilt: by indirect evidence⁵².

No less constructive is M. Ye. Yevheniev's proposal to single out and summarize "*conditions for correctness of the investigation of cases where the accused's guilt is determined on the basis of indirect evidence of guilt*":

- 1) regardless of whether the evidence is direct or indirect, when establishing the existence of a crime in a case, it is vital to collect and investigate evidence meticulously and comprehensively to indisputably and accurately prove the presence of a crime. Only through this process can the accused's guilt be determined based on indirect evidence;
- 2) if the guilt of the accused is established on the basis of indirect pieces of evidence of guilt, then each of them must be carefully verified for good quality and for a causal link with the main fact: crime existence or other investigated facts; crime existence must clarify the existence of indirect evidence of guilt, while collected pieces of evidence should, in turn, confirm crime existence;
- 3) evaluating the quality of specific indirect evidence of guilt or a whole group of pieces of evidence collectively, the question should also be asked whether there is no other fact or circumstance not revealed by the investigation that could serve as counter-evidence as to a specific indirect evidence or group of such pieces of evidence;
- 4) if the accused's guilt is established based on circumstantial evidence, it is essential to verify each of these pieces of evidence to see if a particular evidence of guilt is not interpreted as evidence of crime existence or vice versa;
- 5) if the accused's guilt is established on the basis of indirect evidence, it is vital that specific facts that are circumstantial evidence be established not only by other circumstantial evidence but also by direct evidence of such facts;
- 6) indirect pieces of evidence of guilt available in a case during their evaluation and analysis should be divided into evidence of facts that preceded a crime, accompanied its commission and were detected after its commission. Dividing circumstantial evidence into such groups facilitates their evaluation for quality, veracity, and completeness of research; each of evidence groups must be evaluated both separately and in conjunction with other case data;
- 7) if the accused's guilt is proved on the basis of the so-called behavioural evidence, then each of these pieces of evidence and all of them collectively should be evaluated impartially, not considering the fact that the accused is guilty. The evaluation of *behavioural evidence* carried out objectively, not through the prism of the guilt of the accused, guarantees both completeness and accuracy of research on these pieces of evidence, and correctness of their analysis and synthesis;
- 8) each piece of the accused's *behavioural evidence* must be highlighted and explained in detail, therefore it is essential that for each piece of the accused's behavioural evidence available in a case, the accused should be questioned in detail and that all his/her explanations should be carefully checked⁵³.

Conclusions

During 1930s–1940s, The Soviet Union's interest in the development of crime

52 Евгеньев М. Е. Оп. cit. С. 272.

53 Ibid. С. 280–284.

investigation methods based on the *concept of indirect evidence* was determined by political situation in the prison of peoples, in particular, by the desire of preliminary (pre-trial) investigation agencies and the prosecutor's office at the stages of the pre-trial investigation and trial (usually in cases of "terrorist acts" and "political conspiracies") to receive from the defendants admission of their guilt, which at that time was viewed as the main and decisive evidence. Sometimes (even in conditions of officially authorized physical violence against the accused) such confession was not obtained, and there was no direct evidence. Therefore (at the initiative of Stalin's Chief Prosecutor A. Ya. Vyshynskiy, who at that time was interested in scientific and teaching activities in the field of criminal procedure), the *concept of indirect evidence* with a "special practice" of its application in Soviet territory became widespread.

In Ukraine, a negative role in travestied practice of using the *concept of indirect evidence* was played by the political intervention of party bodies in criminalistics development, imposition of "special trends" in its formation under conditions of "socialist reality" and "class struggle". During this period, "Soviet criminalistics" was opposed to the "bourgeois", strict adherence to the *class approach* in science was required, the pseudo-principle of *partisanship of science* was promoted, "political tasks" were addressed to investigative authorities in textbooks and manuals on criminalistics, and forensic scientists were required to expose the "pseudo-scientific bourgeois methods" of detecting and researching evidence.

In contrast to the above-mentioned trends, the study guide by M. Ye. Yevheniev, published in 1940, is devoid of any political slogans or criticism of foreign

criminalistics. It fairly professionally and in detail outlines the method of investigating cases based on circumstantial evidence, using numerous examples of investigative practice. We believe that the author quite correctly defined the purpose of applying the method: to assure the investigator, the prosecutor as well as the court that the crime under investigation was indeed committed and that it was committed by a specific person. The investigator had to prove these facts in a certain sequence, and failure to do so could result in case dismissal. In fact, these are two major tactical tasks that the investigator solved through the use of this crime investigation method.

Traditionally for that time, the researcher divided evidence (depending on the established fact) into two main types: direct and indirect. Additionally, M. Ye. Yevheniev rightly emphasized that handling direct evidence is not a problem for the investigator: it is challenging to handle indirect evidence because it depends on its high quality and the quality of analysis thereof.

From our perspective, in his method, the researcher aptly used elements of the activity approach: he singled out conditions under which a case is properly investigated with the use of circumstantial evidence; indirect evidence of guilt was determined depending on the stages of criminal activity (preceded crime commission, accompanied crime commission, contributed to crime concealment); among indirect evidence, he distinguished *behavioural evidence* (certain activity: *behaviour, state, reactions*) indirectly confirming involvement of a specific person in crime commission.

The scientist's use of an integrated approach deserves attention: a person's guilt can be established by combining direct and indirect evidence.

The suggestion of M. Ye. Yevheniev to single out clear conditions for accuracy of investigating cases where the accused's guilt is established on the basis of indirect evidence of guilt is of certain scientific interest: such evidence should be collected and investigated as early and as comprehensively as possible; carefully verified for good quality; causal link with the main fact must be confirmed by other pieces of evidence.

We believe it is correct that the investigator cannot use this method only as accusatory method: the investigator must look not only for evidence of the guilt of a specific person, but also for counter-evidence, to carefully check whether evidence of crime existence has been replaced by evidence of guilt. It is rightly pointed out: the accused must be carefully questioned about each piece of evidence, and all his/her explanations carefully checked. The viewpoint of M. Ye. Yevheniev that facts during the investigation established not only through indirect evidence but also through direct evidence is equally valid.

The method developed by M. Ye. Yevheniev is devoid of any schematization, although it contains certain elements of an algorithmic nature, that is, it offers a certain sequence of actions as to its implementation. And this is not surprising, because A. Nicheforo's⁵⁴ crime investigation method, A. Weinhart's⁵⁵ method of identifying and exposing a criminal based on traces and other circumstances (behavioural evidence) had been criticized

in the textbook on criminalistics (1938) edited by A. Ya. Vyshynskiy with the rhetoric traditional for that time: *"All these schemes belong to the period of bourgeois criminalistics development, when aggravation of class contradictions in bourgeois society forced the bourgeoisie to search for new, stronger means to fight its class enemies. Therefore, a characteristic feature of all these schemes is, along with their seemingly apolitical nature, a deeply reactionary nature. None of the indicated authors directly talks about the dependence of investigation tactics and methods on political case importance. However, they all think through their scheme in such a way as to ensure a real strengthening of repression"*⁵⁶. I. M. Yakymov's⁵⁷ general method of investigating a crime relying on indirect evidence was subjected to a more constructive but no less devastating criticism: *"Without stopping at a detailed criticism of attempts to create a typical scheme for investigation made in Soviet forensic literature <...>, which were mostly a combination of various elements of the above-mentioned schemes of bourgeois criminalistics, we can undeniably state that there is no single typical investigation scheme for all crimes and cannot be. Any attempt in this direction is doomed to be inherently futile and can only be harmful, because it can lead the investigator to an unacceptable schematization of investigation, to its formalization"*⁵⁸.

Unfortunately, M. Ye. Yevheniev did not disclose types of indirect evidence links (genetic, chronological, local, correlational, etc.) in his method, paid little attention to peculiarities of evaluating

54 Niceforo A. La Police et l'Enquête judiciaire scientifiques. Paris: Librairie universelle, 1907. P. 397–410.

55 Вейнгартъ А. Уголовная тактика. Руководство къ разслѣдованію преступленій / пер. съ нѣм. Санктъ-Петербургъ, 1912. С. 65–69.

56 Бобров Н. А., Винберг А. И., Голунский С. А., Громов В. И., Зицер Е. У. и др. *Op. cit.* С. 333.

57 Якимов И. Н. Криминалистика ... С. 161–168.

58 Бобров Н. А., Винберг А. И., Голунский С. А., Громов В. И., Зицер Е. У. и др. *Op. cit.* С. 334.

indirect pieces of evidence, and stopped at only one traditional classification of them. At the same time, the developed method is logically structured, easy to understand by practitioners, takes into account traditional factors of suddenness and counteraction to investigation in criminalistics.

The scientist's position concerning the "enduring" evidentiary value of circumstantial evidence is noteworthy: it will be so only when it is rightly collected, correctly systematized, researched and analyzed.

From our perspective, M. Ye. Yevheniev's statement that circumstantial evidence includes the accused's refusal to provide exculpatory evidence in his/her favour or submission of unconvincing evidence is debatable.

As to widespread implementation of this method in judicial and investigative practice, the researcher rightly warned: not inferior to direct evidence in terms of its importance and strength, indirect evidence requires high quality investigative work and application of considerable practical investigative experience from the investigator.

The above-analyzed method of investigating a case based on indirect evidence developed by M. Ye. Yevheniev is a substantial contribution to the development of forensic science about the methods of investigating criminal offenses and the theoretical bases of current forensic methods.

Розслідування справи за непрямыми доказами: метод М. Є. Євгенєва

Анатолій Старушкевич

Доведено, що основою методу розслідування справи за непрямыми доказами, розробленого радянським криміналістом М. Є. Євгенєвим, є концепція непрямих доказів, поширення якої зумовила політична ситуація 1930—

1940-х рр., зокрема прагнення органів слідства та прокуратури у справах про «терористичні акти» і «політичні змови» отримувати від обвинувачених зізнання вини, яке на той час вважали основним і вирішальним доказом. Зазначено позитивні якості методу: логічна структурованість, простота для сприйняття практичними працівниками, урахування традиційних чинників раптовості та протидії розслідуванню, використання діяльнісного та комплексного підходів, алгоритмічності та етапності розслідування злочинів. Оперування прямими доказами не є проблемним для слідчого: складнощі спричиняють саме непрямі докази. За кожним доказом обвинуваченого слід докладно допитати, а всі його пояснення ретельно перевірити. З'ясовано, що розробник методу не розкрив форми зв'язків непрямих доказів, приділив недостатньо уваги особливостям оцінки непрямих доказів. Водночас констатовано, що метод М. Є. Євгенєва є вагомим кроком до становлення вчення про методи розслідування кримінальних правопорушень і теоретичних основ сучасної криміналістичної методики. Мета статті — науковий аналіз методу розслідування справи за непрямыми доказами, розробленого М. Є. Євгенєвим, для з'ясування його ролі у становленні криміналістичного вчення про методи розслідування кримінальних правопорушень. У дослідженні застосовано методи наукового пізнання: спостереження, порівняння, абстрагування, аналіз, синтез, моделювання тощо.

Ключові слова: метод пізнання в криміналістиці; метод розслідування; розслідування кримінальних правопорушень; історія криміналістики; криміналістична методика; непрямі докази; побічні докази.

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