

Criminal Procedural and Forensic Means of Preliminary Forensic Research on Living Person Body

Artem Kovalenko *

* PhD in Law, Docent, Donetsk State University of Internal Affairs, Kropyvnytskyi, Ukraine, ORCID: <https://orcid.org/0000-0003-3665-0147>, e-mail: new4or@gmail.com

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The main criminal procedural and forensic means of preliminary research on living person body are highlighted. The methods of linguistic analysis, formal-legal, formal-logical, forecasting, as well as activity and praxeological approaches in criminology are used. It is argued that as a result of a preliminary forensic examination of living person body, it is possible to obtain information about signs of its appearance (in particular, functional), materially fixed traces on body and clothes, as well as about the person who left them, as a social being. It was found that the leading procedural means of examining living person body of a is an examination aimed at identifying traces of a criminal offense and special signs on a person's body and clothing. It is proved that special signs in the context of research should be understood as any individual (personal) anatomical features of a person's appearance. Visual observation is recognized as the main method of research within the scope of this investigative (research) action, and investigative experiment is procedural means of researching functional features of a person's appearance. This research makes possible to determine a person's ability to perform certain actions, the presence of professional and other special skills, as well as psychophysiological reactions to certain stimuli. It is noted that the functional signs of a person's appearance can be recognized during other verbal and mixed investigative (search) actions: interrogation, search, presentation for identification. Information obtained in this way is indicative and

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can be used for tactical purposes. It is emphasized that further prospects of scientific research in this area are related to the development of criminal procedural and forensic means of preliminary forensic examination of corpses.

Keywords: criminal proceedings; preliminary forensic research; human body; offense traces; anatomical signs of appearance; survey; crime scene reconstruction.

Research Problem Formulation

No criminal offense can do without a person as an element of mechanism of its commission. As a result of direct or indirect participation in criminally relevant events, people reflect their signs in environment and perceive the signs of other elements of the formation mechanism. Therefore, human body (both living and dead) is a potential carrier (source) of various information relevant to criminal proceedings.

Human as a social being who thinks and feels and who is recognized as the highest value in modern humanistic society, needs a special attitude to research on his body. This requirement involves compliance with specific provisions of the procedural law, as well as the use by authorized persons of permissible, ethical and safe tactics and scientific and technical means.

In order to facilitate development of practice-oriented recommendations for the most effective research on body of a living person in criminal proceedings, we consider it appropriate to highlight the main criminal procedural and corresponding forensic means of obtaining and processing such information. In this context, we apply a broad approach to interpretation of the concept of *preliminary research* and understand it as a set of extrajudicial non-expert actions of subjects

of evidence regarding the processing of sources of evidentiary information, obtaining from them and clarifying the content of information about circumstances relevant to criminal proceedings.

Article Purpose

Highlight the main criminal procedural and corresponding forensic means of preliminary forensic examination of the body of a living person.

Research Methods

A set of general scientific and special methods of cognition (in particular, linguistic analysis and formal legal) was used to study provisions of the current criminal procedural legislation on the procedure for conducting an investigation, an investigative experiment and some other investigative (search) actions (hereinafter referred to I(S)A). Using the formal-logical method, circumstances that can be clarified within the framework of these procedural actions have been studied. Means of activity and praxeological approaches in forensic science have worked out the methods and techniques of preliminary examination of the body of a living person. The forecasting method made it possible to determine the further prospects for scientific developments in this area.

Analysis of Essential Researches and Publications

Separate aspects of the procedural order and tactics of conducting procedural actions aimed at obtaining forensically significant information from the human body were considered in their

research papers by: P. Antoniuk and N. Kononenko¹, O. Volobuieva², M. Hryha³, S. Zhuvaka⁴, S. Klochuriak⁵, V. Kovalenko⁶, O. Kotiuk⁷, Ye. Lukianchykov and B. Lukianchykov⁸, A. Taranova⁹, K. Chaplinskyi¹⁰, Yu. Chaplunskyi, V. Olkhovskyi, M. Hubin, P. Kaplunovskyi, V. Sokol, V. Bondarenko, P. Leontiev, E. Hryhorian,

- 1 Антонюк П. Є., Кононенко Н. О. Тактичне забезпечення освідкування особи. *Право і суспільство*. 2022. № 6. С. 215–221. DOI: [10.32842/2078-3736/2022.6.33](https://doi.org/10.32842/2078-3736/2022.6.33) (date accessed: 27.03.2024).
- 2 Волобуєва О. О. Розслідування кримінальних правопорушень проти статевої свободи та статевої недоторканності особи: проблемно-дискусійні аспекти освідкування. *Правовий часопис Донбасу*. 2018. № 1 (62). С. 177–182. URL: http://nbuv.gov.ua/UJRN/pppd_2018_1_27 (date accessed: 27.03.2024).
- 3 Грига М. А. Освідкування у кримінальному провадженні: основні проблеми та шляхи їх розв'язання. *Аналітично-порівняльне правознавство*. 2022. № 3. С. 221–226. DOI: [10.24144/2788-6018.2022.03.40](https://doi.org/10.24144/2788-6018.2022.03.40) (date accessed: 27.03.2024).
- 4 Жувака С. О. Слідчий експеримент: проблеми застосування. *Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція*. 2014. № 9. Т. 2. С. 102–104. URL: http://vestnik-pravo.mgu.od.ua/archive/juspradenc9-2/part_2/32.pdf (date accessed: 27.03.2024).
- 5 Ключуряк С. С. Освідкування в системі слідчих (розшукових) дій : автореф. дис. ... канд. юрид. наук. Київ, 2013. 19 с.
- 6 Коваленко В. В. Участь спеціаліста-криміналіста у слідчому експерименті, що проводиться з метою встановлення спеціальних чи професійних навичок особи. *Криміналістика і судова експертиза*. 2014. Вип. 59. С. 148–153. URL: http://nbuv.gov.ua/UJRN/krise_2014_59_20 (date accessed: 27.03.2024).
- 7 Котюк О. І. Слідчий експеримент: процесуальні аспекти. *Бюлетень Міністерства юстиції України*. 2013. № 3. С. 130–135. URL: http://nbuv.gov.ua/UJRN/bmju_2013_3_21 (date accessed: 27.03.2024).
- 8 Лук'янчиков Є. Д., Лук'янчиков Б. Є. Освідкування особи — засіб інформаційного забезпечення розслідування. *Вісник Національного технічного університету України «Київський політехнічний інститут». Політологія. Соціологія. Право*. 2012. № 1 (13). С. 150–154. URL: <https://ela.kpi.ua/items/cc587ef8-649c-42e8-bc7b-cbedeb54cd19> (date accessed: 27.03.2024).
- 9 Таранова А. Участь спеціаліста в організації та проведенні освідкування під час розслідування неналежного виконання професійних обов'язків медичним або фармацевтичним працівником. *Jurnalul juridic național: teorie și practică*. 2019. № 4. Т. 1. С. 142–145. URL: http://www.jurnaluljuridic.in.ua/archive/2019/4/part_1/31.pdf (date accessed: 27.03.2024).
- 10 Чаплинський К. О. Освідкування як об'єкт криміналістичного дослідження. *Науковий вісник Дніпропетровського державного університету внутрішніх справ. Серія: Право*. 2013. № 2. С. 449–453. URL: <http://biblio.umsf.dp.ua/jspui/handle/123456789/542> (date accessed: 27.03.2024).
- 11 Чаплинська Ю. А. Слідчий експеримент (організаційний аспект). *Криміналістичний вісник*. 2013. № 1 (19). С. 43–48. URL: http://nbuv.gov.ua/UJRN/krviz_2013_1_8 (date accessed: 27.03.2024).

N. Konoval¹² and other domestic scientists. Among the foreign ones, we should note the research papers of E. Ronai and É. Durand¹³, I. Scott¹⁴, M. Doyle¹⁵, W. J. Bodziak¹⁶, P. R. DeForest, R. E. Gaensslen, and H. C. Lee¹⁷, B. A. J. Fisher¹⁸, R. H. Fox, C. L. Cunningham¹⁹, V. J. Geberth²⁰, and others. At the same time, the set of criminal procedural and forensic means of preliminary forensic researches of living person body has not been systematically considered in the special literature, that indicates the relevance of this article.

Main Content Presentation

Human body as an object of the material world is a valuable source and carrier of evidential information in criminal proceedings. As a result of his preliminary

research during the pre-trial investigation of criminal offenses, the following groups of forensically significant information can be obtained:

- about the signs of a person's appearance: as their own (in particular, gender, age, height, weight, physical condition of the body, anatomical signs, special and noticeable signs, etc.) as related (clothing and accessories). Functional features of the appearance of living people (gait, facial expressions, gestures, voice, speech, skills (in particular, criminal), handwriting, etc.) can be essential for criminal proceedings;
- about the material-fixed traces on the human body and clothing (processing of such reflections

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- 12 Судова медицина. Розділ 1. Предмет, завдання і історія розвитку судової медицини. Організаційні та процесуальні основи судово-медичної експертизи. Судово-медична танатологія. Судово-медична травматологія. Огляд трупа на місці події. Судово-медична експертиза трупа. Тема 2. Організаційно-процесуальні засади проведення судово-медичної : метод. вказів. для студент. та лікар. інтерн. / упоряд. В. О. Ольховський, М. В. Губін, П. А. Каплуновський та ін. Харків, 2019. 16 с. URL: <http://surl.li/tyowk> (date accessed: 27.03.2024).
- 13 Ronai E., Durand É. Violences sexuelles: En finir avec l'impunité. Dunod, 2021. 232 p. DOI: [10.3917/dunod.ronai.2021.01](https://doi.org/10.3917/dunod.ronai.2021.01) (date accessed: 27.03.2024).
- 14 Scott I. Organ and Tissue Donation Opportunities during Police Investigations into Suspicious Deaths or Fatal Road Traffic Collisions. *The Journal of Homicide and Major Incident Investigation*. 2010. Vol. 6. Is. 1. URL: http://library.college.police.uk/docs/J_Homicide_MII/J_Homicide_6.1.pdf (date accessed: 27.03.2024).
- 15 Doyle M. Non-suspicious Death (Or Is It?): The Duties and Responsibilities of the Police. *Ibid.* 2011. Vol. 7. Is. 1. URL: http://library.college.police.uk/docs/J_Homicide_MII/J_Homicide_7.1.pdf (date accessed: 27.03.2024).
- 16 Bodziak W. J. Footwear Impressions Evidence: Detection, Recovery and Examination. 2nd ed. New York, 1999. 528 p. DOI: [10.1201/9780203755587](https://doi.org/10.1201/9780203755587) (date accessed: 27.03.2024).
- 17 DeForest P. R., Gaensslen R. E., Lee H. C. Forensic Science: An Introduction to Criminalistics. New York, 1983. 377 p.
- 18 Fisher B. A. J., Fisher D. R. Techniques of Crime Scene Investigation. 9th ed. Florida, 2022. 368 p. DOI: [10.4324/9780429272011](https://doi.org/10.4324/9780429272011) (date accessed: 27.03.2024).
- 19 Fox R. H., Cunningham C. L. Crime Scene Search and Physical Evidence Handbook. Washington, 1973. 204 p. URL: <https://www.ojp.gov/pdffiles1/Digitization/7984NCJRS.pdf> (date accessed: 27.03.2024).
- 20 Geberth V. J. Practical Homicide Investigation Checklist and Field Guide. 2nd ed. New York, 2013. 170 p.

makes it possible to indirectly investigate the trace-forming objects and determine the mechanism of trace formation);

- about a person as a social being (education, profession, marital status, social ties, beliefs, etc.) by examining his body for specific tattoos, scars, jewelry, occupational injuries and diseases, etc.

In order to information contained in the human body to be of evidentiary value, it must be obtained in the manner prescribed by the current criminal procedural legislation. At the same time, compliance with only criminal procedural requirements for the conduct of appropriate actions may not be enough for a proper study of such a specific object. For effective identifying and processing forensically significant features of the human body, it is necessary to apply appropriate means of forensic technology and tactics.

The main procedural means of direct preliminary examination of the body of a living person is examination Article 241 of Criminal Procedural Code of Ukraine²¹ that can be defined as t public I(S)A consisting in the examination (direct perception of external signs) of the body and clothing a living person in order to find traces of a criminal offense or special signs on them, if it is not necessary to conduct a forensic medical examination.

The main direct object of research during this C(R)D is the body of a living person. We agree with E. Lukianchykov and B. Lukianchykov that during survey as a simple examination of the human

body, only external signs can be detected. At the same time, the internal properties and conditions of the body can be determined within the framework of special researches ²² (forensic medical, forensic psychiatric and forensic psychological examinations, as well as, if necessary, in conjunction with other types of forensic examinations). Part 1 of Art. 241 of the Criminal Procedural Code of Ukraine of Ukraine stipulates a restriction according to which during the examination it is impossible to determine the circumstances for which it is necessary to conduct a forensic medical examination.

In addition, within the framework of such an investigative (search) action, it is possible to inspect the clothes in which the examined person is located. Such a study is carried out in the procedural order of Art. 241 of the Criminal Procedural Code of Ukraine of Ukraine, taking into account general tactical recommendations for a detailed review of things.

According to Part 1 of Article 241 of the Criminal Procedure Code of Ukraine, examination as a means of criminal procedural evidence is carried out in order to determine two groups of circumstances: a) the presence (and nature) of traces of a criminal offense on the body and clothing of a living person; b) special signs of the person being examined. These circumstances form the subject of research while conducting this I(S)A.

Traces of a criminal offense in this case should be understood as materially fixed traces of contact, thermal, chemical or

21 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 27.03.2024).

22 Лук'янчиков Є. Д., Лук'янчиков Б. Є. Зазнач. твір. С. 151. URL: <https://ela.kpi.ua/items/cc587ef8-649c-42e8-bc7b-cbedeb54cd19> (date accessed: 27.03.2024).

other action that are formed on the body (skin, nails, hair) and clothing of a person as a result of his participation in a criminal relevant event. In turn, such reflections can be divided into traces of layering, bodily injuries, damage to clothing and other traces of a non-traumatic nature.

Traces of layering are formed as a result of the transfer of substances, objects or their parts to the body or clothes of a person: these are objects and substances that were contained in the surrounding environment of the scene (soil, sand, dust, plant pollen, etc.), parts of devices and mechanisms, with which the person interacted (paint, grease, powder from a gunshot, etc.), objects of biological origin (blood, urine, saliva, semen, post-consumer matter, particles of skin, hair, fragments of nail plates, etc.), in particular, such belonging to the subject. The informative value of the described traces lies in the fact that their research (in particular, further expert research) can make it possible to determine the origin and mechanism of formation of such reflections. According to the results of detection and preliminary research of traces of layering on a person's body and clothing, trace evidence, chemical, biological, DNA analysis and other types of forensic examinations can be prescribed.

The concept of bodily injury to a person is defined at the sub-legal level as a violation of the anatomical integrity of tissues, organs and their functions, which occurs as a result of the action of one or more external damaging factors ²³. Considering

mechanism of trace formation, these can be both traces of exfoliation (separation of a part of tissues from the body, loss of biological fluids, etc.), and the results of the action of other factors (physical, thermal, chemical and other types of influence). It should be noted that the examination is not a procedural means of determining and assessing the nature of bodily injuries, therefore it is necessary to carry out an expert examination of the body of a living person within the framework of conducting a forensic medical examination (clause 2, part 2, article 242 of the Criminal Procedure Code of Ukraine). At the same time, I(S)A, provided for in Art. 241 of the Criminal Procedure Code of Ukraine, can be used to identify and record physical injuries that can quickly disappear due to natural healing mechanisms. If such traces are found, the forensic medical expert can be sent a report of the person's examination and a photo plate to him. As O. Volobueva notes, in the case of detection of signs on a person's body, which are characteristic of more persistent physical injuries, the results of the examination may become a reason for the appointment of a forensic medical examination ²⁴.

Damage to clothing can be detected in the form of a violation of its integrity, detachment of individual parts, etc. Investigation of such traces can help subjects of evidence to identify the features of the trace-forming object and the mechanism of trace formation. In addition, injuries on clothing often correspond to bodily injuries, so they should be investigated comprehensively. Based on results of de-

23 Правила судово-медичного визначення ступеня тяжкості тілесних ушкоджень : затв. наказ. МОЗ України від 17.01.1995 р. № 6. URL: <https://zakon.rada.gov.ua/laws/show/z0255-95> (date accessed: 14.04.2024).

24 Волобуєва О. О. Зазнач. твір. С. 178. URL: http://nbuv.gov.ua/UJRN/pppd_2018_1_27 (date accessed: 27.03.2024).

tection and preliminary research on damage to human clothing, trace evidence, chemical and other examinations can be prescribed (in particular, in conjunction with forensic medical examinations).

In addition to the above, during examination, other traces (changes) of a non-traumatic and non-destructive nature on the human body and clothing can be situationally detected and investigated (for example, tanning, hair fading due to sunlight, redness or weathering of the skin, tightness of clothing, etc.). Such traces (as well as bodily injuries, subject to their external appearance) can at the same time be considered signs of a person's appearance.

Specifics of a person as a subject of research during the survey are most often understood by scientists in the habitoscopic sense of such a term, as distinctive features that have value and significance for identifying a person based on appearance. In particular, V. Shepitko mentions among them tattoos, birthmarks, scars, etc.²⁵; Yu. Alenin: birthmarks, tattoos, scars, scars, warts, absence of some parts of the body, traces of former diseases, etc.²⁶; Zh. Udovenko: congenital and acquired features, anomalies of the anatomical structure; features of individual elements of appearance; signs indicating the activity of the person subject to investigation²⁷. Zh. Udovenko proposed to define the special signs discovered during the survey as signs of appearance, which are deviations from the natural (normal)

anatomical and morphological structure and development of the human body, as external manifestations of the body's functions, which can be perceived on a sensory level and which allow to identify a specific person²⁸.

Among the characteristics of the appearance of a person given by this author, the main thing, in our opinion, is their suitability for use in the process of identifying a person. Interesting is the position of K. Chaplynskyi, who does not limit research topic during the examination only to traces of a criminal offense and special signs: in his opinion, examination as an examination of the body of a living person can be carried out in order to identify and record other signs and properties of the body that are important for criminal proceedings²⁹ that we consider appropriate.

Current Criminal Procedural Code of Ukraine of Ukraine does not contain a separate procedural mechanism for the study and consolidation of general anatomical features of a person's appearance. None of the available procedural actions is directly aimed at knowing the signs of a person's appearance, carrying out their verbal description and visual fixation. For the purposes of making experimental photographs of a person for the purpose of appointing and conducting a forensic portrait examination, photography can be carried out in accordance with Art. 245 of Criminal Procedural Code of Ukraine. At the same time,

25 Велика українська юридична енциклопедія. У 20 т. Т. 20 : Криміналістика, судова експертиза, юридична психологія / редкол.: В. Ю. Шепітько та ін. Харків, 2018. С. 655.

26 Науково-практичний коментар Кримінального процесуального кодексу України / за ред. С. В. Ківалова та С. І. Кравченко. Одеса, 2020. С. 422.

27 Удовенко Ж. В. Криміналістика : конспект лекц. / за заг. ред. В. І. Галагана. Київ, 2016. С. 158.

28 Там само.

29 Чаплинський К. О. Освідування як об'єкт С. 452. URL: <http://biblio.umsf.dp.ua/jspui/handle/123456789/542> (date accessed: 27.03.2024).

there are no procedural mechanisms for photographing a person for further presentation for identification by photo or presentation of such an image to another person during interrogation.

In this case, we suggest considering the survey as a procedural tool for obtaining and consolidating information about the signs of a person's appearance in general, and not only about his special features. Within the current procedure of examining the body of a living person, it is possible to identify and record its general anatomical features that M. Saltevsnyi defined as innate features of the shape, size and location (localization) of individual parts of the human body³⁰. However, the concept of *special signs* is not defined by the current legislation, and depending on situation, law enforcement officers interpret it quite broadly. For the needs of practice, this term can denote any individual signs of a person's appearance, suitable for use in the process of his identification. With such an approach, during survey, it is possible, for example, to measure the height of a person and dimensional characteristics of individual parts of his body, weigh him, compile his verbal portrait, visually and figuratively record the signs of his appearance, etc.

If conclusion of forensic medical examination determines that only a person of a certain height or weight could cause bodily harm to the victim, the examination can become a procedural means of determining the height and weight of the suspect to verify version of his involvement in the commission of the act under investigation. This form of research is more procedurally economical (compared to conducting an investigative experiment) and should precede it. In turn, it is advisable to conduct

an investigative experiment only if the data on certain physical characteristics of the person obtained during the examination confirm the version of his participation in case of criminal offense.

In addition, within the framework of survey of living person body, individual congenital and acquired functional features can be detected and investigated. For example, if the witness or the victim during interrogation points out certain functional features of the person (for example, a violation of mobility of individual joints, such as the hand does not bend, one of the fingers is constantly bent, etc.), then these signs can be detected during forensic examination. At the same time to identify and directly study the complex dynamic properties (functional features) of person, it is advisable to conduct crime scene reconstruction.

Thereby we propose to interpret the concept of "special signs" in terms of Art. 241 of Criminal Procedural Code of Ukraine somewhat more broadly: as any individual (personal) anatomical features of a person's appearance. The proposed approach will make it possible to use the mentioned I(S)A as a procedural tool for researching and recording a person's appearance in general. This will also allow for the implementation of signal photography and 3D scanning of the face in order to clearly capture the signs of its appearance during the examination. At the same time, in order to comply with the principle of legal certainty, we propose to reflect the above-mentioned approach in the text of Part 1 of Art. 241 of Criminal Procedural Code of Ukraine and replace the words: "*identification of special features*" with the words "*identification and fixation of signs of such a person's appearance*".

³⁰ Салтевський М. В. Криміналістика : підручник: у 2 ч. Ч. 1. Харків, 1999. С. 141.

During survey, authorized persons use a number of forensic means of examining the body of a living person, which we suggest to be understood as a set of scientific and technical means, as well as technical-forensic and tactical-organizational recommendations for their use, aimed at the most complete, effective, safe and ethical obtaining forensically significant information from human body.

General tactical-organizational recommendation for the study is the involvement of special knowledge bearers as specialists in this I(S)A. A doctor can be involved in the process of preliminary examination of the body of a living person as a specialist - if probable bodily injuries, traces of biological origin on the body and clothes of a person, as well as special signs that may be associated with defects of individual development or injuries, etc., are investigated. The doctor involved can apply methods of external medical examination and help to identify and correctly describe injuries on the person's body. In addition, as noted by K. Chaplinskyi, the proposal of scientists to involve a doctor in conducting a forced examination to control the intensity of the means of influence applied to the person being examined is worthy of attention³¹. Forensic specialist can be brought in to help identify and record traces on a person's body and clothing. If a minor or an underage person is subjected to examination, in view of the requirements of Art. 227 of the Criminal Procedural Code of Ukraine, a teacher or a psychologist and (if necessary) a doctor should be involved in the conduct of a procedural action as

specialists (the presence of a legal representative and a defense attorney is also mandatory if a minor suspect or accused is being examined). Specialists of a different profile may be involved in the survey on a case-by-case basis.

The body of a living person is examined by an investigator, investigator, or prosecutor through visual perception (observation). The doctor involved can also apply methods of external medical examination (in particular, superficial palpation to localize swellings, dislocations, scars, etc.). In order to detect invisible and barely visible traces of a criminal offense on a person's body (in particular, traces of layering of biological origin, micro-objects), it is possible to use means of optical or digital magnification, sources of visible and invisible light, etc. Rulers, measuring tapes, vernier calipers, scales and other devices are used to measure the anatomical parameters of the person, the size of individual elements of appearance and traces; thermometers for measuring body temperature. A. Taranova rightly observes that it is advisable to entrust the measurement of the size of the detected damages, as well as individual special signs, involved specialist, doctor³². We believe that during the examination, it is sometimes also possible to use operative ultrasound and X-ray examination (in particular, to detect foreign objects in the cavities of the person's body, such as containers with narcotic drugs that person can have previously swallowed).

P. Antoniuk and N. Kononenko single out two main scenarios for conducting human survey:

31 Чаплинський К. О. Тактичне забезпечення проведення слідчих дій : монографія. Дніпропетровськ, 2010. С. 94. URL: <https://dduvs.edu.ua/wp-content/uploads/files/Structure/library/student/mono.pdf> (date accessed: 27.03.2024).

32 Таранова А. Зазнач. твір. С. 144. URL: http://www.jurnaluljuridic.in.ua/archive/2019/4/part_1/31.pdf (date accessed: 27.03.2024).

- 1) if authorized person knows in advance the approximate location of certain signs on the human body, then such a person can be asked to demonstrate corresponding part of the body (or it will be examined forcibly), after which all participants in procedural action visually perceive such signs, fixing them;
- 2) if procedural action subject does not have specific information about special signs or traces on the body and clothes of the person under investigation, such investigative (search) action acquires a searching nature.

In described situations, a methodical continuous visual examination is carried out first of the clothes, and then of the body of the examined person³³. Complete examination of the body of a living person begins with a general examination of the surfaces of clothing, shoes, open areas of the body (primarily the face, neck, hands). After a general examination of the person subjected to the examination, he/she is asked to consistently remove and provide the authorized person with items of clothing, each of which must then be carefully examined³⁴. After that, the parts of the body of examined person who previously concealed clothes are examined.

Information about peculiarities of a person's behavior, embodied in the external manifestations of the functioning of his body, can have significant evidentiary value in criminal proceedings. In theory of forensic science, such properties are called functional features of a person's appearance³⁵.

The main procedural means of preliminary investigation of functional signs of a person's appearance should be recognized as an investigative experiment, the procedure for which is stipulated by Art. 240 of the Criminal Procedural Code of Ukraine. Thanks to this I(S)A, it is possible to determine the presence and investigate three main groups of functional features of a person's appearance: 1) his ability to perform some actions in certain conditions (see something, hear something, overcome a distance in a certain time, etc.); 2) availability of professional and other special (in particular, criminal) skills; 3) availability of psychophysiological reactions to certain stimuli (external manifestations of recognition of objects, terrain, sounds, etc.). These circumstances form the subject of the study of the human body within the framework of crime scene reconstruction.

Ability of person to perform certain actions and availability of special skills is checked by reproducing such actions (skills) in artificially created conditions as close as possible to situation where the person (probably) committed them earlier within the framework of criminal relevant case.

For this purpose, it is necessary to carefully examine the available materials of the criminal proceedings, to accurately determine the circumstances and conditions in which the checking actions were carried out. For this purpose, V. Kovalenko proposes to pre-interrogate the person whose functional characteristics will be investigated as part of the investigation experiment, and find out, for example,

33 АНТОНЮК П. Є., КОНОНЕНКО Н. О. Зазнач. твір. С. 219–220. DOI: 10.32842/2078-3736/2022.6.33 (date accessed: 27.03.2024).

34 ЧАПЛИНСЬКИЙ К. О. Тактичне забезпечення С. 102. URL: <https://dduvs.edu.ua/wp-content/uploads/files/Structure/library/student/mono.pdf> (date accessed: 27.03.2024).

35 Велика українська юридична енциклопедія С. 552.

the method of manufacturing a certain object, the materials used to commit illegal acts, the presence of special skills and experience in the person etc. Later (during the investigative experiment) conditions similar to those described by him during interrogation are created for such a person, and they are offered to reproduce (demonstrate) certain actions. If a person in experimental conditions is not able to reproduce the actions being tested, this may indicate that he does not have the skills he claimed to have³⁶. In this context, the investigative experiment becomes a means of verifying the reliability of the testimony of the person whose functional characteristics are being investigated.

At the same time, it should be agreed with O. Kotiuk that the negative result of the investigative experiment should be assessed carefully and in conjunction with other evidence. Impossibility of reproducing certain circumstances (or actions) in the conditions of this I(S)A often indicates not the fundamental impossibility of their existence, but some conditions that are not taken into account during the experiment³⁷. In practice, there have repeatedly been situations when persons within the mechanism of a criminal offense under the influence of stress and increased production of adrenaline by the body performed certain actions (overcoming long distances, lifting heavy objects, stopping physically stronger persons, etc.), which then could not be reproduced in calmer experimental conditions.

Before carrying out such I(S)A, it is recommended to involve forensic specialists to provide assistance with modeling the

conditions for conducting experimental actions and recording them. In addition, while checking presence of professional or other special skills in a person, it is desirable to involve a person who really has such skills and is able to assess the correctness of their application by the person whose functional signs of appearance are being investigated. Such a knowledgeable person can provide specific devices and technical means necessary for conducting experimental activities. For example, in the process of checking whether a person has the skills to open (overcome) locks, it is advisable to involve a professional locksmith ("safecracker") who can help pick locks similar to those broken during the commission of a criminal offense, provide different types of locks and assess the level at which this person is operates with such means, to formulate questions that will make it possible to check the level of a person's professional awareness, etc.

Information about availability of a person's external reactions to certain stimuli can, for example, be examined by authorized persons during an investigative experiment to check the person's testimony on the spot and determine the degree of his awareness of certain circumstances. For example, testimony of a witness about the fact of his stay in a certain area and his personal perception of criminally relevant events can be verified by bringing this person to the scene of the event and observing his behavior. If under such circumstances a person gets lost, studies the area for a long time, sees certain objects "as if for the first time", corresponding psychophysiological manifestations can appear in his

36 Коваленко В. В. Зазнач. твір. С. 150—151. URL: http://nbuv.gov.ua/UJRN/krise_2014_59_20 (date accessed: 27.03.2024).

37 Котюк О. І. Зазнач. твір. С. 134. URL: http://nbuv.gov.ua/UJRN/bmju_2013_3_21 (date accessed: 27.03.2024).

behavior. In order to identify and correctly assess the described signs, it is advisable to involve a psychologist-behaviorologist as a specialist before conducting an investigative experiment (behaviorism is a direction in psychology that consists in the study of the behavior of people and animals with a complex nervous system as an external manifestation of their psychological activity³⁸). Data on functional characteristics of a person determined in this way usually have indicative value in criminal proceedings. Based on observation, the authorized person can put forward versions about the degree of awareness of the person participating in the investigative experiment, the truthfulness of his testimony, etc. These versions are then checked during this and other procedural steps. We note that it is inadmissible, as from the positions of Part 4 of Art. 240 of the Criminal Procedural Code of Ukraine, as well as for ethical reasons, is the use of an investigative experiment to determine the presence of painful reactions in a person to external stimuli (for example, epileptic reactions to a flashing light, etc.), because such signs are determined exclusively within the framework of judicial medical and forensic psychiatric examinations.

Functional signs of a person's appearance can also be investigated during other verbal and mixed procedural actions. Thus, during the interrogation, the authorized person is recommended to monitor the interrogated person's non-verbal reactions

to the questions put to him, the evidence presented, etc. L. Udalova emphasizes that observing the behavior of the interrogated person is one of the most important conditions for the correct evaluation of the results of the interrogation³⁹. O. Vashchuk believes that the perception and analysis of human-source non-verbal information during the interrogation enables the authorized person to build the tactics of this procedural action and to establish psychological contact with the interrogated person. Information obtained in this way contributes to putting forward the version about the degree of person awareness⁴⁰, truthfulness and accuracy of his testimony, the reasons for disagreements, etc., and the adequate correction of interrogation tactics. During a search, it is traditionally recommended to observe the behavior of the searched person: with a change in the situation of I(S)A, she may show casual psychophysiological reactions of varying degrees of severity (sweating, tremors of the whole body, arms or legs, changes in facial expression, tone of voice, etc.), which can testify to the search success and help to choose necessary means of permissible psychological influence. Within the framework of the presentation for recognition, it is advisable to observe the psychophysiological reactions of the person being recognized and the person being recognized: in this way, it is possible to detect probable signs of mutual recognition and the presence of psychological influence, as well

38 Бондаренко О. В., Слюсаренко Ю. Л. Біхевіоризм від Джона Б. Уотсона до Е. Толмена. *Наукові горизонти*. 2019. № 2 (75). С. 80. URL: http://nbuv.gov.ua/UJRN/Vzhnau_2019_2_14 (date accessed: 27.03.2024).

39 Удалова Л. Д. Теорія та практика отримання вербальної інформації у кримінальному процесі України : монографія. Київ, 2005. С. 210. URL: https://library.nlu.edu.ua/POLN_TEXT/MONOGRAFIJ_2009/UDALOVA_2005.pdf (date accessed: 27.03.2024).

40 Ващук О. П. Антроподжерельна невербальна інформація в кримінальному провадженні: криміналістичні засади : дис. ... д-ра юрид. наук. Одеса, 2018. С. 361. URL: <https://dspace.onua.edu.ua/items/a9c52c07-2ab4-4986-966f-0e25eb41dab7> (date accessed: 27.03.2024).

as external manifestations of strong emotions of the participants in the procedural action, etc. At the same time, the described information about the functional features of a person's appearance do not acquire evidentiary value and are of an exclusively indicative nature.

During interrogation, so-called polygraphs can be used to record the psychophysiological reactions of the interrogated person to the questions asked and other stimuli. Under this name, a number of disparate devices are combined that record changes over time in some parameters of the human body (most often heart rate and breathing rate, blood pressure, degree of sweating (due to skin-galvanic reaction), body temperature, etc.). In popular scientific literature, polygraph examinations are most often described as a method of detecting false statements, and the term "polygraph" is often used as a synonym for a lie detector at the household level. To date, connection between the change in a person's psychophysiological indicators and his false testimony has not been scientifically substantiated, so there are discussions in scientific circles about possibility, expediency and ethics of using such devices.

We are convinced that at the current stage, polygraphs as scientific and technical means should be perceived exactly as they are - devices for recording individual psychophysiological indicators of a person's body. Information obtained with the help of a polygraph during interrogations in criminal proceedings is of an exclusively indicative nature. The use of such a device during an interrogation can be considered a tactical method of psychological influence on the interrogated person. We consider it inadmissible to mislead such a person by exaggerating real capabilities

of the polygraph or by threatening to prosecute him for giving knowingly false statements based on the results of such a device. In addition, according to the current legislation, the of polygraph use tests during any procedural actions in criminal proceedings is purely voluntary.

Conclusions

Consequently, living person body is a valuable source and carrier of forensically significant information in criminal proceedings. As a result of his previous research, you can learn about the signs of a person's appearance, about traces on his body and clothes and about him as a social being.

The main procedural means of preliminary examination of the body of a living person is an examination aimed at determining the presence and nature of traces of a criminal offense on the body and clothing of a person (among which it is possible to single out traces of layering, bodily injuries, damage to clothing and other traces of a non-traumatic nature), as well as special signs of the examined persons. We are inclined to a broader interpretation of the term "special features" as any individual (personal) anatomical features of a person's appearance suitable for his identification. The leading research method during the survey is visual perception (observation) of the human body. A doctor involved as a specialist can also use methods of external medical examination (in particular, superficial palpation). Appropriate scientific and technical means are used to detect invisible and barely visible traces, as well as to measure the size of individual elements of appearance and detected traces.

Key procedural means of preliminary forensic research on functional features of a person's appearance is an investigative experiment, as a result of which it is possi-

ble to identify and investigate the possibility of a person to perform certain actions in certain conditions, availability of professional and other special skills, as well as psychophysiological reactions to external stimuli. During interrogation, search, presentation for identification and other verbal and mixed procedural actions, functional features of a person's appearance are a source of indicative information, the basis for proposing versions and the basis for adjusting the tactics of these actions.

Accordingly, we propose to replace the words: *"detection of" special signs* with the words: *"detection and fixation of signs of such a person's appearance"* in Part 1 of Article 241 of Criminal Procedural Code of Ukraine.

Further prospects for scientific research in this area are associated with processing criminal procedural and forensic means of preliminary forensic research on corpses.

Кримінальні процесуальні та криміналістичні засоби попереднього дослідження

тіла живої людини

Артем Коваленко

Висвітлено основні кримінальні процесуальні та криміналістичні засоби попереднього дослідження тіла живої людини. Використано методи лінгвістичного аналізу, формально-юридичний, формально-логічний, прогнозування, а також діяльнісний і праксеологічний підходи в криміналістиці. Аргументовано, що в результаті попереднього дослідження тіла живої людини можна отримати відомості про ознаки її зовнішності (зокрема, функційні), наявні на тілі й одязі матеріально-фіксовані сліди, а також про людину, яка їх залишила, як соціальну істоту. З'ясовано, що провідним процесуальним засобом дослідження тіла живої людини є освідування, спрямоване на виявлення на тілі й одязі людини слідів кримінального правопору-

шення й особливих прикмет. Доведено, що під особливими прикметами в контексті освідування слід розуміти будь-які індивідуальні (особисті) анатомічні ознаки зовнішності особи. Основним методом дослідження у межах цієї слідчої (розшукової) дії визнано візуальне спостереження, а процесуальним засобом дослідження функційних ознак зовнішності людини — слідчий експеримент. Це дослідження дає змогу визначити можливість особи вчинити деякі дії, наявність у неї професійних та інших спеціальних навичок, а також психофізіологічних реакцій на певні подразники. Зауважено, що функційні ознаки зовнішності особи можна пізнати також під час проведення інших вербальних і змішаних слідчих (розшукових) дій: допиту, обшуку, пред'явлення для впізнання. Отримані у такий спосіб відомості мають орієнтувальний характер, їх можна використати з тактичною метою. Наголошено, що подальші перспективи наукового пошуку у цій сфері пов'язані з опрацюванням кримінальних процесуальних і криміналістичних засобів попереднього дослідження трупів.

Ключові слова: кримінальне провадження; попереднє дослідження; тіло людини; сліди кримінального правопорушення; анатомічні ознаки зовнішності; освідування; слідчий експеримент.

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Declaration of Competing Interest

Author declare no conflict of interest.

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