

ПРАВООХОРОНА В УМОВАХ ВОЄННОГО СТАНУ



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Vyhivskyi Ivan Mykhailovych,

PhD in Law

(National Police of Ukraine, Kyiv)

ORCID: <https://orcid.org/0009-0007-6942-9429>

PECULIARITIES OF USING SPECIAL KNOWLEDGE IN THE INVESTIGATION OF CRIMINAL OFFENSES COMMITTED IN THE CONTEXT OF ARMED CONFLICT

The article emphasises that according to the criminal procedure legislation, while investigating criminal offences in the context of armed conflict, a person with special knowledge and skills in the use of technical or other means is involved in both procedural (participation of subjects of specialised knowledge in investigative (detective) actions) and non-procedural (obtaining consultations, explanations, conducting preliminary research) forms. To ensure effective investigation, the following areas of expertise are outlined: identification of the means and instruments of criminal offences (method of manufacturing an explosive device and its structural elements, method of installation, disguise and detonation, etc).

Key words: special knowledge, specialist, expert, armed conflict, war crimes, criminal proceedings, investigation, investigative (search) actions, examination, expert methodology.

Problem Statement. In the current conditions of armed aggression against Ukraine, the issue of effective investigation of criminal offenses committed in combat zones or within the context of wartime has become particularly urgent. In such situations, there is a growing need to involve specialized knowledge that goes beyond the competence of law enforcement officers and covers the branches of forensic medicine, military affairs, ballistics, explosives, psychology, criminalistics, etc.

The investigation of war crimes and criminal offenses committed during armed conflict is complicated by a number of factors: destruction of the evidentiary base, changes in the scene environment, limited access to witnesses and victims, a high level of latency, and the specific nature of the harm, both physical and psychological. Under these conditions, specialized knowledge becomes a crucial resource in establishing the truth, particularly in identifying deceased bodies, examining the causes and mechanisms of injuries, determining the type of weapon used, and establishing the authorship of documents or traces at the crime scene.

Moreover, the need to align investigative practices with international humanitarian law, the standards of the European Court of Human Rights, and the principles of safeguarding the rights of both victims and suspects in martial law conditions contributes to the growing importance of an interdisciplinary approach and cooperation with experts in law, medicine, sociology, and anthropology.

Thus, the study of the peculiarities of employing specialized knowledge during the pre-trial investigation of criminal offenses committed in the context of armed conflict is not only scientifically justified but also crucial in the broader effort to enhance the effectiveness of law enforcement, uphold the principles of justice, and ensure the administration of justice during wartime.

Analysis of Recent Research and Publications. Separately, theoretical and applied aspects of using specialized knowledge in criminal proceedings have been studied by various scholars, including A. V. Bodnar, A. R. Vorobchak, I. H. Haldetska, Y. O. Danych, Y. V. Kovalevska, I. V. Pyrih, B. V. Romaniuk, E. B. Simakova-Yefremian, A. M. Taranov, A. M. Tymchyshyn, M. H. Shcherbakovskyi, O. V. Shevchenko, O. O. Shulha, among others.

Although the scientific positions formulated by these researchers are of significant methodological value, modern realities underscore the need for a deeper exploration of the peculiarities of using specialized knowledge in the investigation of criminal offenses committed during armed conflict.

Presentation of the Main Text. Effective, comprehensive, and objective pre-trial investigation of criminal offenses committed under conditions of armed conflict is impossible without the systematic and purposeful application of specialized knowledge, both common and highly complex, in the practical work of pre-trial investigation bodies.

According to the criminal procedural legislation, during the investigation of criminal offenses in armed conflict conditions, individuals who have special knowledge and skills in the use of technical or other means are engaged (Article 71 of the Criminal Procedure Code of Ukraine) [1]. A specialist may provide consultations during both the pre-trial investigation and court proceedings on issues requiring specialized knowledge and skills [2, p. 38].

In this context, V. Y. Shepityko asserts that special knowledge refers to a body of up-to-date knowledge in a specific branch of science, technology, art, or craft [3, p. 207]. Conversely, M. H. Shcherbakovskyi interprets special knowledge as professional knowledge acquired through education along with skills gained through practical activity in various domains, which are applied together with scientific and technical tools during expert examinations [4, p. 3]. V. H. Honcharenko defines it as knowledge that underpins specific professions and specializations [5, p. 5]. However, it is generally accepted that special knowledge entails complex forms of knowledge and the methods required to obtain it, mastery of which demands professional training. Furthermore, special knowledge is not limited to what an individual expert possesses but also includes the broader knowledge base of a particular area of social practice [6]. Avoiding theoretical debate, it is reasonable to define special knowledge in Ukraine's criminal procedure as scientific knowledge, practical skills, and competencies acquired through professional education, specialized training, advanced courses, and work experience. These can be applied following the procedural rules of criminal law to fulfil the objectives of criminal proceedings [7, p. 301].

K. P. Shevchyshena notes that the use of special knowledge in the investigation of war crimes has gained particular relevance in the context of active hostilities on the territory of Ukraine. Accordingly, the National Police of Ukraine constantly faces numerous challenges such as security issues, logistical support, heavy caseloads (numerous episodes), lack of experience, and the need to establish both internal and external coordination (communication) with other law enforcement units. Other pressing issues include the creation of new information-analytical and forensic databases, technical limitations (lack of effective equipment for investigating such crimes), an overburdened pool of specialists and experts conducting various examinations in Ukraine, and the absence of specialized methodologies for investigating specific types of war crimes, particularly due to the ever-expanding array of tools and methods used to commit these offenses. Addressing these challenges is only possible through coordinated action and streamlined, efficient information sharing among all law enforcement bodies and other institutions involved in war crimes investigations in Ukraine. This also requires ongoing training, acquisition of new knowledge and skills, sharing of experience with colleagues, international cooperation and assistance, active participation in international training, and the development of new investigative methods grounded in practical experience [8, p. 18].

Given the diversity of objects requiring inspection, investigators must cooperate with a significant number of specialists. Depending on the object type, in addition to the commonly engaged forensic expert, narrowly specialized professionals may be required, such as explosives technicians, ballistics experts, weapons specialists, experts in missile and aviation technology, artillery officers, mechanics, and others. Firefighters or personnel from the State Emergency Service of Ukraine (SESU) may also be involved in examining fire scenes, as well as dog handlers with service

dogs, forensic medical experts or doctors to examine bodies, biologists for DNA sample collection, and other specialists. The involvement of various categories of professionals, such as educators, psychologists, physicians, auto technicians, experts in construction and engineering, forensic scientists, forensic medical examiners, portrait artists, biologists, process engineers, physical-chemical technologists, environmental protection experts, representatives of the cultural and artistic fields, explosives specialists, ballistics experts, weaponry experts, gas industry professionals, and energy and technical inspectors significantly enhances the effectiveness of investigations [8]. Alongside the forensic expert, who may perform photo and video documentation, it is advisable to involve a dedicated video specialist. This is because, according to Article 615 of the Criminal Procedure Code of Ukraine, the special wartime procedure requires continuous video recording during searches of a person's home, other property, or personal searches in the absence of witnesses. For photo and video documentation, unmanned aerial vehicles (UAVs) – specifically multicopters, including quadcopters – are recommended. Aerial imagery can be particularly useful for drafting a layout of the crime scene, especially when the examination must be urgently completed due to changes in the operational environment or the risk of entering a danger zone [9].

Items and weapons discovered by specialists at the scene are of critical importance, particularly those indicating the use of warfare methods prohibited under international law. These include weapons with indiscriminate effects, such as cluster munitions, booby traps, and anti-personnel mines; remnants or packaging from biological or chemical weapons; weapon types that cause excessive suffering, including incendiary and expanding bullets; projectiles that tumble or flatten inside the human body; shrapnel traces, such as fragments of plastic, metal, wood, or glass that are difficult to detect in the body; and explosive (incendiary) shells [9, p. 350; 10, p. 13].

Considering the specific mechanisms by which criminal offenses are committed in armed conflict, the use of specialized knowledge in the form of expert examinations is crucial for evidence collection during pre-trial investigations. For example, investigations of war crimes require the analysis and study of numerous circumstances and conducting many types of expert examinations, as provided for in Articles 242–245 of the Criminal Procedure Code of Ukraine. Even before the full-scale invasion of Ukraine by the Russian Federation, investigative bodies often had to wait over a year for forensic examination results due to the heavy workload (or lack of experts in certain fields) at state expert institutions. In wartime, the situation has worsened: some forensic experts have become refugees or internally displaced persons, others have joined the Armed Forces of Ukraine or Territorial Defence and are unable to perform their professional duties, making it even more difficult to obtain expert opinions.

The effectiveness of expert examinations is directly linked to the coordination between the investigator (or inquirer) and the expert. This coordination includes the early discussion of tasks to be addressed by the expert, joint use of tools for collecting and preserving evidentiary information, and, if necessary, the use of tactics to disorient opposing parties [11, p. 107].

The involvement of an expert, as well as the appointment and conduct of forensic examinations in criminal proceedings related to environmental offenses, should only occur when genuinely necessary—namely, when the circumstances and consequences of the ecological crime or the guilt of an

individual cannot be established without the expert's opinion. It is impermissible to appoint an expert to settle issues requiring specialized knowledge that exceeds the professional training of the investigator or prosecutor. In other words, legal questions must not be posed to the expert [12].

According to paragraph 15 of the Instruction on the Organization of Forensic Examinations and Documentation of Expert Proceedings within the units of the Expert Service of the Ministry of Internal Affairs of Ukraine (approved by the MIA Order No. 591 of July 17, 2017), the timeframe for conducting a forensic examination or expert study is determined by the head of the research forensic centre (or the respective department), depending on the complexity of the study and the expert's workload, and is as follows: up to 10 days – for materials classified as simple examinations; up to 30 days – for medium-complexity examinations; up to 60 days – for complex examinations; up to 90 days – for particularly complex examinations [13].

In the investigation of criminal offenses during armed conflict, the following types of forensic examinations are considered appropriate: forensic-medical; molecular-genetics; fingerprint; photo-technical; traceological; audio-video recording; portraying; linguistic; weapons and the traces and circumstances of their use; forensic explosive; materials, substances, and products; military; construction and technical; environmental engineering; ballistic; fire-technical, among others. The party appointing the expert examination shall pay special attention to the sequencing of such studies in order to preserve critical information. In certain cases, forensic experts employ destructive testing methods. According to paragraph 3, part 5 of Article 69 of the Criminal Procedure Code of Ukraine, an expert is obliged to preserve the object of the examination; if the study involves the complete or partial destruction of the object or alteration of its properties, the expert must obtain permission from the person who engaged them [14, p. 143].

For example, while investigating cases involving the abuse of civilians or prisoners of war, it is common to conduct forensic-medical examinations of living individuals. The purpose of such examinations is to determine the presence of bodily injuries in victims and to assess their sexual condition in connection with acts of violence committed against them. The preparation and execution of this type of examination must be based on the regulatory legal acts of the Ministry of Health of Ukraine. Specifically, this includes: the Instruction on Conducting Forensic Medical Examinations, the Rules for Forensic Medical Assessment of the Degree of Bodily Harm, and the Rules for Conducting Forensic Medical Examinations (Assessments) of Sexual Conditions in forensic medical examination bureaus [15]. Examinations of living individuals are typically carried out in departments of forensic medical examination or in forensic medical offices within general outpatient clinics. In certain cases, the examination may be conducted in hospitals (if the victim is receiving inpatient treatment), and occasionally in the investigator's office (if the use of specialized medical equipment is not required). The content of the questions (tasks) posed to the expert is determined by the nature of the circumstances of the criminal offense under investigation [16].

The investigation of mass graves can be an integral part of broader inquiries into potentially unlawful killings. Information about such graves, provided by witnesses, community members, and survivors, may contain crucial details for the protection and investigation of burial sites. According to the Law of Ukraine "On State Registration of Human Genomic Information", *the following categories of genom-*

ic data are subject to mandatory state registration: 1) persons who have been notified of suspicion of committing intentional serious or especially serious crimes against national security, life, health, liberty, honour, dignity, sexual freedom and inviolability of the person, property, public safety, in the sphere of narcotic drugs and psychotropic substances circulation, or crimes against peace, humanity, and international law, or those for whom indictments in such criminal proceedings have been submitted to court; 2) persons who have committed socially dangerous acts or crimes in the aforementioned categories and who, by court decision, have been subjected to compulsory medical measures; 3) persons convicted of committing intentional crimes against national security, life, health, liberty, honour, dignity, sexual freedom and inviolability of the person, property, public safety, in the sphere of drug circulation, or crimes against peace, humanity, and international law; 4) genomic information established from biological material obtained during investigative (detective) actions in accordance with the Criminal Procedure Code of Ukraine and not yet identified; 5) unidentified human corpses, remains, and body parts, with information about their discovery entered into the Unified Register of Pre-Trial Investigations (URPTI) or recorded in a decision to initiate a pre-trial investigation issued under Article 615 of the Criminal Procedure Code of Ukraine; 6) genomic information obtained from previously collected biological samples of missing persons or biological material from their personal belongings, with relevant data entered into the URPTI or documented in a decision to initiate a pre-trial investigation under Article 615 of the Criminal Procedure Code of Ukraine; 7) persons unable to report information about themselves due to health conditions, age, or other circumstances [17].

The investigation of war crimes also entails the execution of a large number of forensic examinations and the use of other forms of specialized knowledge, including:

- forensic examination of materials, substances, and products (conducted to detect microparticles or microtraces of certain materials and substances on objects at the crime scene (carrier items), and to determine their type based on classification);

- military expertise (assigned to establish the circumstances surrounding the use and actions of military formations, as well as to determine the events that led to severe consequences such as casualties, loss of weaponry, military equipment, state infrastructure, and citizens' private property. This also includes determining the direction and artillery systems used for shelling (when the expert is provided with a scene inspection report and appendices by specialists, such as a missile and artillery expert, including a completed topographic map at scales of 1:25,000 or 1:50,000 and the conclusion of an explosive technical examination);

- construction and technical expertise (carried out to obtain data on the technical condition of buildings and structures, causes of damage or destruction of sites and their elements, and to assess the cost of construction work associated with reconstruction or the elimination of consequences caused by mechanical impacts, fire, etc.);

- environmental engineering expertise (aimed at acquiring information about phenomena, processes, and material objects related to the impact of anthropogenic factors on ecosystems. This includes identifying causes of environmental harm, assessing its consequences, and determining the amount of damage compensation owed to the state due to violations of environmental protection laws);

- fire and technical expertise (conducted to investigate the circumstances of the occurrence and spread of fires and

compliance with fire safety requirements). The main tasks of such an expertise may be to establish the mechanism of fire occurrence (combustion), the process of its development and methods of extinguishing, determine the phenomena, processes, conditions for fire occurrence, establish the circumstances that preceded the occurrence of the fire and caused its spread. In this case, the following *questions* may be asked for the expertise to resolve: where was the place of initial combustion (fire source); in what ways did the spread of fire and combustion products occur; what is the mechanism of fire occurrence; what is the cause of the fire; as a result of which source of ignition did the fire occur; what circumstances of the fire event caused its consequences; at what time the initial combustion in the fire centre began, which resulted in a fire; during what period the fire lasted; which came first: fire or explosion [18];

– geolocation expertise of electronic devices (the subject of this examination is billing information in electronic format related to the operation of a terminal in mobile telecommunications networks, and electronic data from devices containing geolocation information on the terminal's position during its functioning).

Conclusions. Given the specific mechanism of committing criminal offenses in conditions of armed conflict, it is necessary to use special knowledge in the form of an examination in order to obtain evidence during their pre-trial investigation. The pre-trial investigation of war

crimes involves the analysis and study of a large number of circumstances and the conduct of a variety of examinations in accordance with Articles 242–245 of the Criminal Procedure Code of Ukraine in order to: establish the means and instruments of committing criminal offenses (the method of manufacturing an explosive device and its structural elements, the method of installation, masking and detonation, etc.); identify persons involved in the commission of criminal offenses; determine the damage caused, which includes the identification of deceased persons and the establishment of the method of their defeat (death), the severity and nature of bodily injuries, as well as determining the amount of property damage caused and the occurrence of other serious consequences.

During the investigation of criminal offenses amidst armed conflict, the following examinations are assigned: weapons and traces and circumstances of their use; forensic explosives (99% of criminal proceedings); ballistics (97%); forensic medicine (95%); molecular genetics (93%); fire engineering (88%); traceology (82%); portrait and fingerprinting (72%); photography and video recording (68%); linguistic (65%); forensic materials, substances and products (61%); military; construction engineering; engineering and environmental (in over 50%). Such examinations are aimed at establishing the means and instruments of commission, identifying victims, criminals (servicemen), and establishing the amount of damage caused.

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Вигівський Іван Михайлович,

кандидат юридичних наук

(Національна поліція України, м. Київ)

ORCID: <https://orcid.org/0009-0007-6942-9429>

ОСОБЛИВОСТІ ВИКОРИСТАННЯ СПЕЦІАЛЬНИХ ЗНАНЬ ПРИ РОЗСЛІДУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, СКОЄНИХ У КОНТЕКСТІ ЗБРОЙНОГО КОНФЛІКТУ

У статті наголошується, що, згідно з кримінально-процесуальним законодавством, для розслідування кримінальних правопорушень у контексті збройного конфлікту залучається особа, яка має спеціальні знання та навички у використанні технічних чи інших засобів. У більшості кримінальних проваджень допомога спеціаліста використовувалася в різних формах, як процесуальних (участь суб'єктів спеціалізованих знань у слідчих (розшукових) діях), так і непроцесуальних (отримання консультацій, пояснень, проведення попередніх досліджень). Зважаючи на різноманітність об'єктів, що підлягають огляду, слідчому необхідно залучати значну кількість спеціалістів. Залежно від типу об'єкта, окрім звичайного спеціаліста-криміналіста, можуть знадобитися вузькопрофільні експерти, такі як експерти з вибухових речовин, балістики, експерти з озброєння, фахівці з ракетних та авіаційних технологій, артилеристи, механіки тощо. Також можуть бути залучені пожежники або співробітники Державної служби з надзвичайних ситуацій для огляду місця пожежі, кінологи зі службовими собаками, судові експерти або лікарі для огляду тіл, а також біологи для збору зразків ДНК та інші фахівці. Значно підвищує ефективність розслідувань можливе залучення різних категорій спеціалістів, таких як вчителі, психологи, лікарі, автотехніки, експерти в будівельно-технічній галузі, судові експерти, судово-медичні експерти, портретисти, біологи, інженери-технологи, технологи у фізичній та хімічній галузях, фахівці з екології, фахівці у галузі культури та мистецтва, експерти з вибухових речовин, балістики, експерти зі зброї, газу, енергетики та технічного нагляду. Для того, щоб належним чином довести факт скоєння кримінальних правопорушень у контексті збройного конфлікту та забезпечити їх ефективне розслідування окреслено такі галузі експертизи: ідентифікація засобів та знарядь вчинення кримінальних правопорушень (спосіб виготовлення вибухового пристрою та його структурних елементів, спосіб його встановлення, маскування та детонації тощо).

Ключові слова: спеціалізовані знання, спеціаліст, експерт, збройний конфлікт, воєнні злочини, кримінальне провадження, розслідування, слідчі (розшукові) дії, експертиза, експертна методологія.