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РОЛЬ КРИМІНАЛІСТИКИ ТА СУДОВОЇ ЕКСПЕРТИЗИ В МІЖНАРОДНОМУ СПІВРОБІТНИЦТВІ З РОЗСЛІДУВАННЯ ЗЛОЧИНІВ

Анотація. *Застосування криміналістичних та судово-експертних знань є необхідною передумовою розслідування злочинів на локальному та національному рівні. Без застосування криміналістичних та судово-експертних знань розслідування в межах кримінального процесу стає мертвим та бездоказовим. Але із глобалізацією світових процесів, розвитком технологій, швидкості передачі інформації, нагальною проблемою стало утворення злочинності поза межою однієї держави та вихід її на міжнародний рівень, що стало викликом у протидії такій злочинності та необхідності спрямування криміналістичних та судово-експертних знань на допомогу правозастосовній діяльності. Особливістю протидії розслідуванню злочинів стало створення міжнародного співробітництва криміналістів та судових експертів ще до утворення практичних інституцій, які могли б ним протидіяти на практиці. При цьому окремі представники таких міжнародних союзів та асоціацій зробили серйозні кроки в створенні механізмів реальної протидії злочинам на міжнародному рівні (Р.А. Рейсс, Г. Содерман, М.Ш. Бассіуні). Розкриття проблеми міжнародного співробітництва в розслідуванні злочинів через визначення ролі криміналістики та судової експертизи (судових наук) дозволило зосередити увагу на наступних блоках: 1) міжнародні об'єднання криміналістів щодо протидії злочинності в історичному розрізі; 2) міжнародні організації кримінальної поліції у протидії злочинності; 3) міжнародне співробітництво в галузі проведення судових експертиз; 4) використання криміналістичних та спеціальних знань у діяльності Міжнародного кримінального суду. Таким чином, демонструється поєднання теорії та практики боротьби зі злочинністю. Історично це пов'язується із роллю криміналістики та судової експертизи у фіксації слідів вчинення злочинів, їх аналізі та формуванні правових, криміналістичних та судово-експертних висновків. Метою дослідження є встановлення втзначальною ролі криміналістики та судової експертизи в міжнародном співробітництві з розслідування злочинів. Для цього автори звернулися до криміналістичних та судово-наукових знань, історичних процесів, які слугували створення значних міжнародних організацій, що створені для протидії міжнародній злочинності*

Ключові слова: *криміналістичні знання, судово-експертні знання, кримінальне розслідування, судові науки, міжнародна кооперація, міжнародний кримінальний суд*

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THE ROLE OF FORENSIC SCIENCE AND FORENSIC EXAMINATION IN INTERNATIONAL COOPERATION IN THE INVESTIGATION OF CRIMES

Abstract. *The application of forensic science and expertise is a necessary prerequisite for the investigation of crimes at the local and national level. Without the use of forensic science and expertise, an investigation within the framework of a criminal process becomes dead and unsubstantiated. But with the globalisation of world processes, the development of technologies, the speed of information transmission, the formation of crime outside the borders of one state and its entry into the international level has become an urgent problem, which has become a challenge in countering such crime and the need to steer forensic science and expertise towards assisting law enforcement activities. A special feature of countering the investigation of crimes was the creation of international cooperation between forensic specialists and expert witnesses even prior to the establishment of practical institutions that could counteract them in practice. Therewith, some representatives of such international unions and associations have taken serious steps in creating mechanisms for real counteraction to crimes at the international level (R.A. Reiss, G. Soderman, M.Sh. Bassiuni). Coverage of the problem of international cooperation in the investigation of crimes through the definition of the role of forensic science and expertise allowed focusing on the following blocks: 1) international associations of forensic specialists for combating crime in the historical context; 2) international criminal police organisations in combating crime; 3) international cooperation in the field of conducting forensic examinations; 4) the use of forensic and special knowledge in the activities of the International Criminal Court. Thus, a combination of theory and practice in the fight against crime is demonstrated. Historically, this is associated with the role of forensic science and expertise in recording traces of crimes, analysing them, and forming legal, forensic, and expert witness opinions. The purpose of the study is to establish the decisive role of forensic science and expertise in international cooperation in the investigation of crimes. For this, the authors turned to forensic science and expertise, historical processes that served to create substantial international organisations created to counter international crime*

Keywords: *forensic expertise, expert knowledge, criminal investigation, forensic sciences, international cooperation, international criminal court*

INTRODUCTION

The origin and development of forensic sciences has had a protective (pragmatic) nature in the fight against crime from the very beginning. Forensic science traditionally relates to the dynamically developing sciences of the criminal law cycle. Literary sources fairly note that modern forensic science, as a certain reality, is quite difficult to describe, even within the framework of one scientific school. The avalanche-like flow of new knowledge requires rethinking the subject and boundaries of forensic science, especially taking into account the processes of globalisation, integration, and differentiation of knowledge [1]. International cooperation in the investigation of crimes is designed to resolve one of the main contradictions: crime has become international, and the means of combating it mainly remain national [2; 3]. In this sense, it is necessary to state the important role of forensic science in international mechanisms for countering modern crime.

Coverage of the problem of international cooperation in the investigation of crimes through the definition of the

role of forensic science and expertise allowed focusing on the following blocks: 1) international associations of forensic specialists for combating crime in the historical context; 2) international criminal police organisations in combating crime; 3) international cooperation in the field of conducting forensic examinations; 4) the use of forensic and special knowledge in the activities of the International Criminal Court. Thus, a combination of theory and practice in the fight against crime is demonstrated. Historically, this is associated with the role of forensic science and expertise in recording traces of crimes, analysing them, and forming legal, forensic, and expert witness opinions. Special attention in this context should be focused on recording traces of international crimes committed during the World War One, which was committed by the outstanding forensic specialist R.A. Reiss [4]. It was thanks to his research and opinions that the aggression of the Austro-Hungarian and related armies and the crimes committed during this period were condemned. The actual continuation of such research was the creation of Interpol, which was developed

with the involvement of a prominent forensic specialist G. Soderman [5].

The history of forensic science knows the periods when there were real steps to create certain associations of criminologists to solve their problems. In this regard, the history of the emergence and functioning of the International Forensic Union (hereinafter referred to as “the IFU”) is of interest. The establishment of the IFU is associated not only with the emergence of a scientific idea and a substantial circle of its supporters, but also with the active participation of famous personalities – Franz von Liszt, Gerardus Antonis van Hamel, and Benoit Adolf Georges Prince [6]. It is also important that since 1897 the IFU has had representatives from the Ukrainian lands (which at that time were part of the Russian Empire) (professor of the Imperial Kharkiv University V.P. Danevsky). Later (January 12, 1900) the well-known forensic specialist, the founder of the psychological area in criminal law, professor of criminal law of the Imperial Kharkiv University L. E. Vladimirov, and a little later (since January 1, 1901) – A.A. Levinstym and M.I. Kuplevasky joined the International Forensic Union [6]. The history of forensic science also knows other examples of the establishment of international organisations specialising in forensics. In particular, in 1929, the International Academy of Forensic Science was established, which was based in Vienna (Austria). Its founders: M. Bischoff, E. Locar, C.J. van Ledden-Hülsebosch, G. Popp, Z. Türkel [7].

International cooperation requires the efforts of individual states at the national level to comply with international standards. Mechanisms of international cooperation in the investigation of crimes include mutual legal aid, extradition, transfer of prisoners, transfer of materials of criminal proceedings, international cooperation for the purpose of confiscation of proceeds from criminal activities and return of assets, etc. Mechanisms for international cooperation in combating crime are based on bilateral and multilateral agreements or arrangements, and in some cases on national law. In this sense, UN conventions are of importance: the Convention Against Transnational Organised Crime, the Convention Against Corruption, the Convention for the Suppression of the Financing of Terrorism, etc. A substantial contribution to the development of forensic science and forensic expertise is the development of a series of Education for Justice training modules by the United Nations Office on Drugs and Crime. In particular, this refers to a module developed within the framework of the Education for Justice Initiative (E4J), which is a component of the global programme for the implementation of the Doha Declaration – Module 4 Cybercrime “Introduction to Digital Forensics” [8]. Recently, the terms “digital forensics” and “digital evidence” have been widely used. Therewith, “digital forensics” is considered as a branch of forensic science that studies the extraction and investigation of data found on digital devices, which are quite often associated with cybercrime [9].

The issue of investigating the role of forensic sciences in international cooperation in the investigation of crimes was studied by M.Sh. Bassiuni [10], D. Maver [11], G. Malewski [1], R.A. Reiss [4], G. Soderman [5],

E. Simakova-Yefremyan [12], C. Feniveshi [13], Y. Chornous [14] and others [15-23].

The purpose of the study is to establish the decisive role of forensic science and expertise in international cooperation in the investigation of crimes. For this, the authors turned to forensic science and expertise, historical processes that testify to the creation of substantial international organisations which served to counter international crime. Notably, the role of forensic specialists and expert witnesses in the implementation of such counteraction is particularly important.

1. MATERIALS AND METHODS

To achieve this purpose, the authors used the following methods: analysis and synthesis, induction and deduction – upon the development of the study, establishing trends in the approaches to international cooperation in the field of crime investigation; Aristotelian method – upon the definition and research of regulations of various levels; comparative legal method – upon comparing the achievements of the sciences of national and international mechanisms for countering crime; historical legal – upon the appeal to historical events and processes that served as a forensic and expert witness basis for the creation of international institutions for combating crime; and others. The use of analysis and synthesis, induction and deduction allowed the authors to create a study with a structure from general to individual problems of countering international crime at different levels (Association of forensic specialists in different countries – creation of International Criminal Police Organisations – creation of international forensic institutions – application of forensic science and knowledge in the activities of the International Criminal Court). The authors managed to focus on the development of forensic knowledge, which contributed to the development of international approaches to combating crime (from regional to national, from national to international). The use of induction and deduction made it possible to refer to the structure of forensic knowledge and pay attention to a separate level of countering international crime. At the same time, of importance was the development and application of the Rome Statute of the International Criminal Court, which has become special for Ukraine in the context of aggression in the Autonomous Republic of Crimea, Donetsk and Luhansk Oblasts (since 2014).

The system-structural method was used during the planning and execution of the study, as well as the establishment of groups of bodies, institutions and organisations that were created for the purpose of investigating crimes. It also made it possible to logically structure the study in three areas: 1) international criminal police organisations in countering crime; 2) international cooperation in the field of conducting forensic examinations; 3) the use of forensic and special knowledge in the activities of the International Criminal Court. The philosophical and legal method was used to establish the philosophical background of the study of the problem of determining the role of forensic science and expertise in international cooperation in the investigation of crimes. The development of philosophical thought made it possible

to reach the need for real protection of human rights in the global meaning and to protect humanity after the catastrophic consequences of the first and second World Wars through the creation of forensic, expert witness, legal and judicial institutions.

At the time of writing, the hermeneutics method was used as a philosophical method of analysing and interpreting the text of other studies and certain historical documents. In this sense, it is possible to talk about the specific features of interpretation regarding the study of the processes of investigation of international crimes, the role of forensic and other special knowledge in international cooperation in the investigation of crimes in different countries of the world, the involvement of international institutions from the standpoint of hermeneutics. The semantic method was used to establish the exact meaning of “forensic science” and “forensic expertise” in international cooperation in the investigation of crimes (in linguistic and semiotic concepts). The comparative legal method was used to compare the mechanisms of legal response to international crime in the world, which takes place in cooperation with states at different levels in order to stop and condemn the behaviour of individuals and legal entities, as well as individual states (aggressors). At the same time, there is a clear tendency to combine such efforts in the global dimension and at the levels of law enforcement organisations that apply forensic expertise. The historical and legal method was used in the study of historical events and processes that served as a forensic expert basis for creating international institutions for combating crime. The processes related to the First and Second World Wars became special, which serve as the starting points for both uniting states in the pursuit of human rights and creating real mechanisms for countering international crime.

In the system of methods of this scientific research, an important place is occupied by methods of studying (analysing) documents that store information about certain historical facts, archival cases, witness statements, expert proceedings, etc. The use of the document study method involved the use of two main methods: the classical (or conventional) method and content analysis. Content analysis is a formalised method of studying documents using a quantitative approach.

2. RESULTS AND DISCUSSION

2.1. *International criminal police organisations in countering crime*

A special role in countering modern (transnational) crime belongs to international law enforcement agencies. One of such bodies is the *International Criminal Police Organisation* (Interpol) [24] – an international law enforcement organisation that coordinates international cooperation between police bodies (institutions) of different countries of the world [25].

The need for international cooperation between the police of different states in the fight against crime was first proclaimed at the founding meeting of the International Union of Criminal Law in 1899. In 1914, the first International Congress of the Criminal Police (Monaco) was held. Representatives of 14 countries discussed the

coordination of police bodies of different countries in combating crime, the possibility of creating a department for recording international criminal information and unifying the procedure for the extradition of criminals. The main activities of Interpol, according to its charter, include: a) criminal registration, the object of which is information about international criminals and crimes of an international nature; b) international search for criminals; c) search for suspects to monitor them and control their movement; d) search for missing persons; e) search for stolen items [26]. Information received by the Ministry of Internal Affairs of Ukraine through Interpol channels is placed in the integrated database of the National Security Service of Interpol in Ukraine on the following subsystems: 1) document; 2) persons; 3) transport; 4) firms; 5) numbered items; 6) currency; 7) art objects [27].

Interpol's forensic (international) records are the most effective tool in the fight against international crime. These records relate to convention crimes, that is, crimes whose public danger is established by the relevant international conventions, namely: drug trafficking, counterfeiting, theft of cultural property, etc. Information related to the interests of two or more states is also registered: about persons who have committed a dangerous crime abroad; about crimes related to international criminal organisations; about persons who have committed a crime and are hiding abroad, etc. Interpol does not keep records related to crimes of a political, military, religious, or racial nature (Article 3 of the Interpol Charter). The records of Interpol and the NSS of the states that are members of this international organisation are: 1) an alphabetical file of persons with a criminal record, suspected of committing crimes; 2) a file of data on the appearance of the criminal (file “S”), which contains 177 indicators, including the place of commission of the crime, race, nationality. The “S” file cabinet is used in cases where the identity of the criminal cannot be established either by fingerprinting or by a file of photographs; 3) a file of documents and names. In particular, the documents section contains information about passports, identity cards that have ever been used by criminals; documents on the right to own an airplane, car, firearms; 4) a file of crimes (especially the method of committing); 5) a fingerprint file; 6) a photo library (photos of more than 20 thousand of the most dangerous criminals); 7) a file of persons who are missing; 8) a file of stolen cars; 9) a file of works of art, cultural values, antiques, precious jewellery; 10) reference file of hand-held rifled firearms [27].

2.2. *International cooperation in the field of forensic examinations*

There are various forms of international cooperation in the field of forensic expertise. In particular, the main ones may include the following: 1) information exchange (scientific and information exchange); 2) joint scientific and practical events (conferences, symposia, congresses, etc.); 3) training of expert personnel and advanced training abroad; 4) interaction within the framework of improving the quality of forensic examinations in different countries; 5) international standardisation of forensic activities; 6) interaction within international expert

associations (organisations); 7) involvement of forensic experts from different countries in the investigation and trial of international crimes. Important in international cooperation in the field of forensic expertise is the exchange of information on quality improvement and training by non-governmental organisations (European Network of Forensic Institutions (ENFSI), International Association for Identification (IAI), etc.) [28-30]. A considerable influence on forensic expertise is exerted by the development of relationships within the European Network of Forensic Institutions (ENFSI), which includes participation in the organisation of thematic conferences, exchange of methods and reference materials, replenishment of the list of members of the organisation [30].

In modern realities, in most countries of the world, as a rule, the question of the need to standardise and unify forensic expertise is raised. A so-called verification of the results of expert research and certification of expert methods is required. The problem of the need to improve the quality of forensic expertise and standardise expert methods was addressed at one time in the United States. In 2015, the US Department of Justice and the FBI admitted that their experts had been giving false testimony in courts based on the results of hair analysis for two decades. In particular, up to 32 defendants were sentenced to death and executed. In 2015, the national forensic commission of the US Department of Justice, together with the National Institute of Standards and Technology (NIST), published the report *Directive Recommendation: Root Cause Analysis (RCA) in Forensic Science*, which recognised these shortcomings [31]. A form of international cooperation in the field of forensic expertise is the participation of forensic experts from different states in the investigation and judicial review of humanitarian law offences and other crimes of an international nature.

2.3. Use of forensic and specialised knowledge in the activities of the International Criminal Court

The work of the international community to establish tribunals – special courts for the investigation of the most serious crimes is of great importance. AS early as in 1919, at the Paris Peace Conference, it was proposed to establish an international body (Permanent Chamber) of criminal justice for political leaders accused of committing international crimes. The establishment of the International Criminal Court has its own history [32]. Countering international crimes (the crime of aggression, the crime of genocide, crimes against humanity, war crimes) has always been the subject of cooperation of the international community. Therewith, quite often states cannot prove guilt and bring to justice specific persons (top officials of the state) who committed the mass destruction of people without assistance. Historical examples of real prosecution of persons for international crimes are the decisions of the Nuremberg military tribunal against certain persons involved in crimes and mass killings during World War II, the international tribunals for Yugoslavia and Rwanda, etc.

The International Criminal Court is the first permanent International Criminal Court established based on an international treaty with the purpose of overcoming

impunity for persons responsible for the most serious international crimes. Article 17 of the Rome Statute refers to the principle of complementarity, which lies in the fact that the International Criminal Court exercises its jurisdiction only in cases that the state does not have the desire or ability to investigate independently. As of today, the jurisdiction of the International Criminal Court has already been partially recognised by Ukraine. At one time, Ukraine actively took part in the preparation of the Rome Statute and signed it on January 20, 2000, but has not yet ratified it. Literature sources have drawn attention to certain problems of ratification of the Rome Statute of the International Criminal Court in the light of Ukraine's European choice [33]. Ukraine has already applied twice to the International Criminal Court for recognition of its jurisdiction in February 2014 and 2015 based on Part 3 of Article 12 of the Rome Statute. The first application concerned the commission of crimes against humanity by top state officials during peaceful protests between November 2013 and 22 February 2014. The second is crimes against humanity and war crimes committed by senior officials of the Russian Federation and leaders of the terrorist organizations "DPR" and "LPR", as well as aggression, as a result of which the Autonomous Republic of Crimea has been annexed [33]. Noteworthy are the reports of the International Criminal Court on the actions of the preliminary investigation of 2017 [34], 2018 [35] and 2019 [36] on these issues.

The most striking example in the history of forensic science regarding the collection of evidence in difficult conditions of armed conflict is the activity of Prof. R.A. Reiss. In 1914, R.A. Reiss arrived in Serbia at the invitation of its government as an expert to investigate the crimes of the Hungarian, German, and Bulgarian armies in the World War One. In 1916 R.A. Reiss published "Report upon atrocities committed by the Austro-Hungarian army during the First invasion of Serbia" (London, 1916). In 1918, R.A. Reiss published another work, which he dedicated to the events of the World War One: "Infractions aux lois et conventions de la guerre commises par les ennemis de la Serbie depuis la retraite Serbe de 1915. Resume de l'enquete execute sur le front de Macedoine" (Paris, 1918). Both works by R.A. Reiss constitute a forensic study of the facts that took place during the World War One. These works are made in the form of reports or conclusions, which were illustrated by photographs, witness statements, and expert studies [37]. These materials were used to convict crimes committed during the World War One. The practice of using forensic knowledge to collect evidentiary information during global armed conflicts (including hybrid wars) is also relevant in modern conditions. The process of investigating war crimes involves the use of separate forensic techniques. It is also possible to talk about the need to develop and apply the latest forensic tools, methods, techniques, and technologies.

Article 15 of the Rome Statute makes provision that a prosecutor may initiate an investigation *proprio motu* based on information about crimes within the jurisdiction of the Court (Part 1). The prosecutor evaluates the gravity of the information received. To this end, he or she may request additional information from the state, United

Nations bodies, intergovernmental or non-governmental organisations, or from other reliable sources that he or she deems appropriate, and may obtain written or oral evidence at the court's seat (Part 2). In addition, Part 3 Article 15 of the Rome Statute states that "victims may make submissions to the Pre-Trial Chamber in accordance with the Rules of Procedure and Evidence"¹. The activities of the International Criminal Court make provision for the possibility of applying special knowledge. A form of international cooperation in the field of forensic expertise is the participation of forensic experts from different states in the investigation and judicial review of humanitarian law offences and other crimes of an international nature. The rules of Procedure of the International Criminal Court² contain Provision 44 "Experts", which stipulates the possibility of involving experts in the activities of the International Criminal Court. In particular, Paragraph 2 of this regulation states that "the chamber may instruct participants in the process to jointly bring their instructions to the attention of the expert." Paragraph 5 states that "the chamber may make any orders regarding the subject of the expert report, the number of experts to receive instructions, the method of communicating instructions to experts, the form of providing their evidence, and the time frame for preparing and reporting their report". The Rules of Procedure and Evidence of the International Criminal Court³, which are a tool for applying the Rome Statute, also make provision for the use of specialised knowledge. Thus, Rule 19 "Expertise in the Unit" regulates the possibility of applying for an expert examination in various cases.

CONCLUSIONS

In the context of global threats to the world community and the evolutionary transformation of crime, the use of forensic and other specialised knowledge should play an important role as a factor in countering negative trends and restoring justice. In the historical dimension, the real need to unite forensic specialists from different countries of the world to solve important tasks in international cooperation in the investigation of crimes (the International Forensic Union, the International Academy of Forensics, etc.)

is traced, and the main mechanisms of international cooperation in countering crime in modern realities are identified. International law enforcement agencies and, in particular, the International Criminal Police Organisation (Interpol) are essential in countering transnational crime. In the most important areas of Interpol's activity, the forensic component is identified – the creation and use of forensic (international) records as the most effective means in countering international crime. The specific features of international cooperation in the field of forensic expertise were identified. Attempts were made to identify various forms of international cooperation during forensic examinations. The study emphasised the role of international non-governmental organisations (European Network of Forensic Institutions (ENFSI), International Association for Identification (IAI), etc.) in optimising forensic expertise, improving the quality of forensic expertise, standardising expert methods, and improving staffing.

In modern conditions, cooperation between different countries of the world in the investigation of crimes can be traced in the activities of the International Criminal Court. The investigation of international crimes is the subject of research both at the national level and in cooperation with the international community. Based on the scientific and legal analysis of the Rome Statute and other regulatory documents, attention is drawn to the use of forensic tools and the possibility of conducting expert research in the activities of the International Criminal Court. The International Criminal Court should be a symbol of international justice, which makes balanced and fair decisions. The International Criminal Court is one of the most important institutions of international criminal law, which applies mechanisms for investigating international crimes and protects human rights at the International and national levels. The process of investigating international crimes should be based on forensic and other specialised knowledge. The activities of the International Criminal Court are also important because they directly relate to the events in Ukraine (the occupation of certain areas of the Donetsk and Luhansk Oblasts, as well as the Autonomous Republic of Crimea).

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