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ОКРЕМІ КРИМІНАЛІСТИЧНІ ВЧЕННЯ: КОНЦЕПТУАЛЬНІ ПІДХОДИ ДО ФОРМУВАННЯ

Анотація: Розглянуто концептуальні підходи до формування та застосування окремих криміналістичних учень (теорій) як наукових конструкцій, що становлять основу структури загальної теорії криміналістики та визначають рівень розробки теоретико-методологічної бази цієї науки. Складовою частиною загальної теорії криміналістики, її стрижнем виступають окремі криміналістичні вчення (теорії), які передують їй або, навпаки, породжуються нею і досліджують тільки певне коло закономірностей об'єктивної дійсності з числа тих, які вивчає криміналістика в цілому. Запропоноване авторське визначення поняття «окреме криміналістичне вчення (теорія)» та висловлені пропозиції щодо систематизації окремих криміналістичних учень, визначення їх місця у структурі загальної теорії криміналістики. Підкреслено, що характер закономірностей, які досліджує кожне з окремих криміналістичних учень (теорій), обумовлюють порядок їх упорядкування в структурі загальної теорії криміналістики. Водночас, між предметами загальної теорії криміналістики та окремих криміналістичних учень, існують відносини підпорядкованості цілого і частини. У структурі загальної теорії криміналістики доцільно виділяти два рівні окремих учень: 1) криміналістичні вчення (теорії) загальнонаукового рівня, що охоплюють наукознавчі проблеми; 2) криміналістичні вчення (теорії) окремоннаукового рівня, які стосуються дослідження закономірностей, що входять до предмета криміналістики, розкривають його сутність і специфіку. Зазначено, що сучасна система окремих криміналістичних учень (теорій) є динамічною і її вдосконалення зумовлене потребами судової та слідчої практики, розвитком суміжних галузей знань, загальної теорії і окремих криміналістичних учень, зміною зв'язків і залежностей між ними. Визначені критерії, яким має відповідати окреме криміналістичне вчення (теорія). Виокремлені дискусійні питання щодо цієї проблеми, окреслено шляхи оптимізації наукових розробок у ці й царині знань.

Ключові слова: криміналістична діагностика, теорія криміналістики, механізм слідоутворення, механізм злочину.

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PRIVATE CRIMINALISTICS DOCTRINES: CONCEPTUAL APPROACHES TO THE FORMATION

Abstract: *The conceptual approaches to the formation and implementation of private criminalistics doctrines (theories) have been considered as scientific constructions that form the basis of the structure of the general theory of criminology and determine the level of development of the theoretical and methodological basis of this science. The author's definition of the notion "private criminalistics doctrine (theory)" has been proposed, and suggestions are made to systematize private criminalistics doctrines and determine their place in the structure of the general theory of criminology. It has been emphasised that the nature of the regularities, explored by each of the particular criminalistics doctrines (theories), determines their order in the structure of the general theory of criminology. At the same time, there are relations of subordination of the whole and the part between the subjects of the general theory of criminology and private criminalistics studies. It is noted that the modern system of private criminalistics doctrines (theories) is dynamic and its improvement is conditioned by the needs of judicial and investigative practice, by the development of related branches of knowledge, the general theory and private criminalistics theories themselves, by changes in connections and dependencies between them. The criteria, that a private criminalistics doctrine (theory) must meet, are determined. The discussion questions in the problem under study are identified, the ways to optimise scientific research in this field of knowledge are outlined.*

Key words: criminalistics diagnostics, criminalistics theory, inquiry mechanism, degeneracy mechanism.

INTRODUCTION

In the structure of the general theory of criminology as a system of ideological principles, theoretical concepts, categories and concepts, methods and relationships, definitions and terms [1], private criminalistics doctrines occupy the main place. On the whole, the general theory of criminalistics can be considered as a system of various degrees of generalisation and orientation of certain criminalistics teachings, which collectively form the theoretical and methodological basis of this science. Development of conceptual approaches to the formation and application of private criminalistics doctrines (theories), definition of their place in the structure of the general theory of criminalistics is one of the most topical areas of criminalistics researches, which determines the state of formation of its theoretical and methodological basis. That is why the development of established approaches to the systematization of private criminalistics doctrines, determining their place in the structure of the general theory of criminalistics should be considered an effective way to format modern scientific criminalistics paradigm.

Such scientists as R. S. Belkin, A. M. Vasiliev, A. I. Wienberg, A. Yu. Golovin, V. G. Goncharenko, A. O. Eysman, A. O. Exparhopoulos, G. A. Zorin, S. Z. I. Kirsanov, V. V. Klochkov, V. O. Konovalova, V. Ye. Kornoukhov, I. M. Luzgin, G. A. Matusovsky, S. P. Mitrichov, V. O. Obratsov, MV Saltevsky, M. O. Selivanov, V. G. Tanezevich, B. M. Shaver, V. Yu. Shepitko, M. P. Yablokov and others made the significant contribution to the development of private criminalistics doctrines. At the same time, in the modern domestic literature, there are almost no publications devoted to the study of conceptual approaches to the formation and realisation of private criminalistics doctrines (theories), the formulation of criteria and conditions under which a private theoretical constructions transform into private criminalistics doctrines. That is why the purpose of the article is to provide the author's definition of the notion "private criminalistics doctrine (theory)", to highlight the approaches to the formation and realisation of these scientific constructions, to determine the place in the structure of the general theory of criminalistics depending on the degree of development and generalisation of the elements of the object of cognition displayed by them, scientific and practical significance.

1. MATERIAL AND METHODS

The described scientific problem relates to the researches aimed at formation of the general theory of criminalistics that reflects the current level of development of this area of legal knowledge and belongs to the most important areas of criminalistics doctrine.

In order to achieve described goal, the author used the complex of general scientific and special methods of scientific knowledge. Thus, the use of dialectic and historical method of knowledge has allowed researching the evolution of scientific approaches to the formation of the general theory of criminalistics and its structural elements. The comparative method has created a possibility to demonstrate the difference between the general theory of criminology and private criminalistics theories, to determine approaches to its creation and realisation, to prove that the ratio of the subordination of the whole and the part existing between the subject of the general theory of criminalistics and private criminalistics doctrines is the criteria, which let relate certain theoretical structure to the theory of a certain level.

The use of Aristotelian method and system-structural approach allowed to classify private criminalistics doctrines depends on various degrees of development and generalisation of the elements of the object of cognition displayed by them, scientific and practical significance and to propose in the structure of the general theory to highlight criminalistics doctrines of general scientific and separately scientific level. The analysis method has provided the generalisation of accumulated theoretical knowledge regarding the understanding of the general theory of criminology and private criminalistics doctrine, approaches to their formation and realisation.

2. RESULTS AND DISCUSSION

2.1 *The formation of the general theory of criminalistics and its structure*

Basing on the ideas of science studies regarding the fact that any theory must meet requirements of validity (to make assumptions, based on limited information, regarding fundamentally new facts or about the future state of studied objects), certainty (to describe results of research using terms of this theory), reasonableness (to set rational relations between certain ideas of theory), consistency (inside and with findings) [2]., R. S. Belkin highlighted such features of the general theory of criminalistics:

- Theory can claim to be general only if it covers the whole subject of research, related to it in its entirety, and not only to one of its elements;
- Conception or system of conceptions that are the content of the general theory should be related not to phenomena, but mostly to the essence of a subject of research and to explain this essence;
- Disclosing the essence of the subject of research, the general theory should reveal factors, which make this essence constant;
- Patterns of relations or connections of phenomena, i.e. patterns of the process, research of which is the purpose of this area of scientific knowledge.
- The general theory must be based on the principles of the theory of reflection that matters the scientific outlook and reflect the "dialectic of things" as the basis of the "dialectic of the idea", and not on the contrary;
- The general theory must be a closed conceptual system, elements of which are closely linked and organically interwoven with each other [1].

Despite a rather unequivocal understanding of the essence of the general theory, scholars have different views regarding the definition of its structure and elemental composition. Moreover, the complication of the problem necessitates researching it repeatedly, reconsideration of own views. Thus, R. S. Belkin firstly highlighted the following basic elements of the general theory of criminalistics:

1) Introduction to the general theory of criminalistics (scientific part of the general theory – the subject of science, its task, principles, laws of development and place in the system of scientific knowledge);

2) Private criminalistics doctrines (theories): the doctrine about the mechanism of crime, theory of criminal identification; theory of criminal diagnostics, criminalistics doctrine about indicators, doctrine about patterns of information about crime and its participants, about patterns of work with evidence, about crime, commitment and concealment of crime, etc. In the author's opinion, along with the developed criminalistics doctrines less developed and barely described should be highlighted as well;

3) Doctrines about criminalistics methods – methodology of criminalistics in the narrow sense of this notion;

4) Doctrines about language of criminalistics – system of notions and definitions that are used in criminalistics;

5) Systematics of criminalistics – the principles of dividing of criminalistics knowledge into branches of science, from the system of criminalistics science in general, system of its branches and until private criminalistics systems and classifications [3].

Analyzing the suggested structure of the general theory of criminalistics, it is difficult not to notice that there is certain combination of different stages of generalisation of theoretical constructions; in particular, the doctrine of methods, the language, criminalistics systematics should relate to the theories of general scientific orientation, while the doctrine of the mechanism of crime, about patterns of information about crime and its participants, about patterns of work with evidence – to private scientific theories. The conception suggested by Belkin did not fully meet the criteria for this distinction of the general and private theories as whole and part, on which the author apparently also drew attention, because in following works he made the appropriate corrections. In the recent work of the "Course of Criminalistics" R. S. Belkin suggests a wider structure of the general theory of criminalistics, to the elements of which he includes:

1) The ideas, in which the idea of the subject of criminalistics is formed, its task, purpose and place in the system of scientific knowledge, the concept and content of its general theory (the first section – the introduction to the general theory of criminology).

2) The ideas that reflect the objective patterns of the crime mechanism in the aspect of criminology.

3) The ideas that reflect the objective patterns of information about a crime and criminal, patterns of gathering, evaluation and use of evidence, and that are the basis for the development of criminalistics means, methods and recommendations on the use of evidence in the practice of crime control, which are divided into four sections:

- a) Criminalistics doctrine about patterns of information about a crime and criminal;
- b) Criminalistics doctrine about patterns of gathering evidence;
- c) Criminalistics doctrine about evaluation and use of evidence.

The system of private criminalistics doctrines about skills, commitment and concealment of crime; about the mechanism of marking formation; signs; fixation of evidence; about criminalistics registration; search; versions and investigation planning; general principles of the methodology of criminalistics expert research; causality; identification; forecasting, etc. The composition of the structure concludes with the doctrines of methods and language and criminalistics systematics, which make up three separate sections [1].

This architectonics of the general theory of criminology, of course, was a certain step forward and differed from the proposed designs in both form and content. However, it also has flaws. Firstly, trying to avoid previous mistakes, R. S. Belkin deduces from the system of private criminalistics theories the doctrine of the mechanism of the crime, although he calls it "the ideas that reflect the objective laws in the mechanism of crime in the aspect of criminology," that is hardly to consider more accurate. Besides from the gnosiological and epistemological perspective, it is not really correct to men-

tion “doctrines of patterns” because doctrine (theory) is system of knowledge about certain groups of patterns of objective reality. In this regard, it is more expedient to speak of “criminalistics theory of crime”, “criminalistics theory of crime knowledge”, the subject of investigation of which will be the patterns of information of crime and offender, as well as patterns of gathering, study, evaluation and use of evidence. The results of the knowledge of the listed patterns are the basis of the formation and improvement of other private doctrines of a certain orientation, for example, doctrines of the version and planning, fixation of evidence, investigating situations, etc., and for the development of forensic means, techniques and recommendations in order to optimise the process of detection and investigation of a particular crime. Secondly, it is not completely understandable what three independent sections regarding doctrines of methods, language and criminalistics systematics were mentioned and where these sections’ place in the system of criminalistics.

Ideas of M. V. Saltevskiy regarding this issues are close to the position of Belkin. Saltevskiy relates to the most important in the criminalistics doctrines the following:

1. Doctrine about patterns: a) mechanism of a crime commitment; b) occurrence of information, its sources about a crime and its participants; c) gathering and use of criminalistics information in proof.

2. Private criminalistics doctrines (theories) about: skills; features and characteristics; way of committing a crime; versions and planning (versioning); trace formation mechanism; systematization and registration of criminalistics sources of information; gathering, storage, processing and automated use of information; identification and grouping.

The list of private criminalistics doctrines (theories), as author emphasises, is changing with the development of science of criminalistics, depending on the needs of the practice of crime control, therefore the list is approximate [4].

Z. I. Kirsanov suggested the peculiar structure of the general theory of criminology, in which certain criminalistics theories are differentiated into two levels: those, which are elements of the general theory and those, which are studied in the different branches of criminalistics. He related to the first the doctrine about the mechanism of crime and its reflection; the doctrine about organisation of activity regarding detection, prevention and revealing of crimes and the doctrine of general methods of criminology [5]. A. V. Ischenko divides theories into fundamental (general) and applied. If theoretical structures affect the development of the whole science, are being used in all its components, then they are considered as applied. Fundamental theories are the general theory of criminology; the doctrine of the development of forensic science; the doctrine of the principles of criminology; the doctrine about methods; the doctrine of the subject; the doctrine of language; criminalistics theory of causality; criminalistics theory about the mechanism of trace formation; criminalistics theory of the sign; criminalistics theory of organisation of work with proofs; the theory of criminalistics cybernetics and

others [6]. O. Yu. Golovin came to the conclusion that the most acceptable structure of the general theory of criminology is as science-based foundations of criminalistics; methodological foundations of criminalistics; system of separate criminalistics theories (doctrines) [7]. O. O. Eksarhopulo in the structure of the general theory of criminalistics highlights three sections: theoretical foundations of criminalistics science, criminalistics theories of crime, criminalistics theory of knowledge of the event of a crime in the process of its revealing, investigation and prevention [8; 9]. V. S. Mitrichev suggested in the theory of criminalistics such groups of doctrines: general doctrines, general teachings, that is, those which are the theoretical foundations of science in whole or of its separate sections, and individual doctrines, which are the scientific basis of existing areas of criminalistics activity [10]. V. O. Obratsov also excludes from the general theory private criminalistics theories, distinguishing in the criminalistics system two components: the general part — the general theory and a special part — a collection of private doctrines and theories [11; 12].

The listed ideas, but certainly, not all among those, which described in criminalistics literature concerning the system of criminalistics in general and its general theory in particular, suggest that this problem remains one of the most controversial science studies problems. In this connection it seems expedient to highlight certain thoughts, which must be taken into account in the realisation of the systematization of forensic knowledge. Firstly, differentiation of theoretical structures into general and private conditioned, primarily, by the degree of generalisation of the elements of the object of cognition displayed by them, wherein the degree is either criminalistics science or event of crime or activity concerning crime investigation. Secondly, theory can claim to be general only if it covers the whole subject of research, related to it in its entirety, and not only to one of its elements. Thirdly, the general theory itself as a section of criminalistics science is the systematic formation, which includes both theories of the theory of general scientific level, as well as private scientific theories. Analyses of nature and features of existing intertheoretical connection let to make the conclusion that the horizontal interconnection manifests itself mostly between the theories of general scientific level, and the vertical interconnection is more specific to the system of private scientific theories (doctrines): the theory of criminalistics identification – the theory of trasal identification – the theory of fingerprint identification. At the same time, the ratio of the subordination of the whole and the part existing between the subject of the general theory of criminalistics and private criminalistics doctrines is the criteria, which let relate certain theoretical structure to the theory of a certain level.

2.2 The formation of private criminalistics doctrines (theories)

The theoretical basis of criminalistics is continuously modifying, by theories of varying degrees of maturity, of scientific and practical significance are being added. For today it can be stated that criminalistics the same as any other science is the

system of theories, because “only being the system of theories, science is able to explain different phenomena and correlations at present and to predict the course of development in the future” [13]. In particular, development of criminalistics doctrine of the victim [14], criminalistics classification of crimes [15], criminalistics theory of temporary connections and relations in the investigation of crimes [16], criminalistics theory of investigative situations [17], criminalistics characterisation of crimes [18], etc. can be considered complete. Serious steps have been taken to create a theory of criminalistics object [19], criminalistics theory of causality [20], forecasting [21; 22] and so on.

At the same time, applications and statements about already formed or other new theory or necessity of creation of one have to be maximally reasoned given that not all theoretical constructions can claim to be private scientific theories. In such way, Obraztsov suggests to create “*general*” (italics by us – V. Z.) criminalistics theory of interaction, scientific and practical need of which has been felt more clear” [23]. It seems that such situation is partly connected with the rather free interpretation.

This situation is partly due to the rather free interpretation of the largely controversial thesis of R. S. Belkin that “the system reserve (meaning individual theories – V. Z.) is consisted from private theoretical constructions or sets of such constructions, the consolidation degree of which may be evaluated differently by different researchers. The recognition or denial of such set by private criminalistics depends on such evaluation” [24].

The mentioned approach does not contribute to problems solutions, but, on the contrary, generates unnecessary discussions. All innovations claimed to be “private criminalistics doctrine (theory)” should meet the criteria, which has been developed or being developed in the criminalistics. Neglecting these criteria leads to a purely subjective, sometimes without sufficient scientific argumentation, evaluation of the results of a scientific research, to an artificial mechanical transfer into the general theory of such theoretical constructions, which were granted the status of private criminalistics theory by will of one or another scientist. “The theory of criminalistics programming expert and creative systems” [25], “the theory of complicated direct knowledge”, “the theory of recognition” [26], “criminalistics ordology” [27] and others can fall into the category of doubtful theoretical constructions.

The process of determining the criteria, according to which it is expedient to evaluate one or another theoretical construction basing on whether there are indicators of doctrine (theory), have just started. Thus, R. S. Belkin highlights among such criteria, primarily, the general principles of formation and the reasonableness of conclusions [24]. Besides, each private criminalistics doctrine (theory) must have object, subject and methods of research, disclose the content and nature of relationships with other doctrines (theories), determine a purpose, a task, functions and a place in the system of criminalistics, be based on certain scientific hypotheses, have needed empirical foundation, and a corresponding degree of consolidation, which makes it pos-

sible to identify certain patterns that complement, clarify the subject of science of criminology in general.

The organisation of criminalistics (doctrines) included in the structure of the general theory of criminology should be made taking into account the following ideas:

- there are relations of subordination of the whole and the part between the subjects of the general theory of criminology and certain forensic students (theories);

- every private criminalistics doctrine (theory) supplements and specifies the subjects of criminalistics science, researching only a limited circle of patterns among those, which criminalistics studies in general. Ye. I. Zuev pointed out that private criminalistics doctrines "clarify the general theory of criminology, complement it with new data" [28];

- nature of patterns, which are studied by each of created criminalistics doctrines (theories), conditions the order of their division.

Given the above, it is considered expedient to highlight two levels of private doctrines in the structure of the general theory of criminology: 1) criminalistics doctrines (theories) of the general scientific level covering science-related problems of the object, subject, methods, sphere of research, system, nature, conceptual apparatus and the categories of criminalistics (the language of criminology), its inter-scientific connections and the place in the system of scientific knowledge, history of development and the present state; 2) criminalistics doctrines (theories) of a private scientific level relating to the study of the patterns that are part of the subject of criminology, reveal its essence and specifics.

Patterns are revealed and formed on the theoretical level basing on data of empirical research. The subject of criminalistics in a general sense is the system of interconnected patterns of two levels: 1) patterns of occurrence, existence and disappearance of information about the mechanism of a crime (functional side of criminal activity) and its consequences (traces); 2) patterns of receiving, researching, evaluation and use of information about the mechanism of crime and its consequences (traces) in the process of proof.

Basing on the ideas mentioned above criminalistics doctrines (theories) of private scientific level may be divided into following groups:

1. Criminalistics doctrines (theories) about mechanism of crime:

- Criminalistics doctrine about the mechanism of crime;
- Criminalistics doctrine about the mechanism of trace formation;
- Criminalistics doctrine about features;
- Criminalistics doctrine about skills;
- Criminalistics victimology;
- Criminalistics homology (doctrine about criminal identity);
- Criminalistics doctrine about time relations and connections;
- Criminalistics classification of crimes;
- Criminalistics characteristics of crimes, etc.

2. Criminalistics doctrines (theories) of knowledge of the mechanism of crime
 - Theory of criminalistics identification;
 - Criminalistics theory of forecasting;
 - Criminalistics doctrine about the version;
 - Criminalistics theory of planning and organization of investigation;
 - Criminalistics theory of fixation of evidence information;
 - Criminalistics theory of causality;
 - Criminalistics theory of tactical operations;
 - Criminalistics doctrine about criminal registration, etc.

The given list of private criminalistics doctrines (theories) is not exhausted and final, because these doctrines are constantly developing, and changes of their system, according to N. I. Klimenko, are caused by such factors: a) occurrence of a certain need in the practice of crime control; b) the development of related branches of knowledge and their integration or differentiation; c) the development of the general theory of criminalistics as a result of penetration in the essence of the subject of science; d) the development of the private criminalistics doctrines (theories), changes of connections and relations between them [29].

CONCLUSIONS

The general theory of the criminalistics as the system of the main ideas of this area of knowledge, which covers maximally full reflection of the subject of science, its conceptions, categories, definitions, methods in a certain relations and intermediations, constantly develops. Fundamental ideas that are the foundation of the general theory are being updated and improved. The formation of the general theory reflects the current level of the development of the science of criminalistics.

The component and the core of the general theory of criminalistics is private criminalistics doctrines (theories) that precede it or, on the contrary, arise along with it and research only limited circle of the patterns of the objective reality among those, which criminalistics studies in whole. Every private criminological doctrine (theory) must have its own object, subject and methods of research, reveal the content and nature of relations with other theories (theories), determine the purpose, tasks, functions and place in the criminalistics system, be based on a certain scientific hypothesis, have the necessary empirical foundation, as well as the corresponding degree of consolidation, which makes it possible to identify certain patterns that supplement, clarify the subject of science of criminology in general. Only if they meet these requirements, private theoretical constructions can acquire the status of private criminalistics doctrine (theory).

In the structure of the general theory of criminalistics, it is expedient to highlight two private doctrines: 1) criminalistics doctrines (theories) of general scientific level covering science-related problems of the object, subject, methods, sphere of research, system, nature, conceptual apparatus and the categories of criminalistics (the language of criminology), its inter-scientific connections and the place in the system of scien-

tific knowledge, history of development and the present state; 2) criminalistics doctrines (theories) of a private scientific level relating to the study of the patterns that are part of the subject of criminology, reveal its essence and specifics.

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