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THE USE OF SPECIAL KNOWLEDGE IN THE INVESTIGATION OF MURDERS MOTIVATED BY RACIAL, NATIONAL OR RELIGIOUS INTOLERANCE

Abstract. The article considers the use of special knowledge in the investigation of murders motivated by racial, national or religious intolerance. The various forms of employing special knowledge are explored, including specialists participating in investigative actions and forensic examinations. Special knowledge refers to scientific, technical, and professional knowledge used to clarify circumstances in criminal proceedings. Specialists in the fields of psychology, linguistics, sociology, ethnology, interethnic relations, religious studies, and theology can help increase the effectiveness of crime scene investigations and identify circumstances indicating intolerance as a motive. When appointing an examination, the questions asked to experts should align with their expertise and be clear to elicit specific answers. Forensic examination provides scientifically obtained information from material objects to establish important facts for a case. The expert’s opinion is a procedural source of evidence according to criminal procedural legislation. It is defined the types of examinations that can be conducted during criminal investigations, including forensic medical examination, forensic toxicological examination, forensic histological examination, forensic molecular genetic examination, forensic psychological examination, forensic psychiatric examination, dactyloscopic examination. The examples of court cases where some of these types of examinations were used are provided. It is noted that in cases involving suspected murders motivated by racial, national or religious intolerance, a semantic-textual examination could help determine if the suspect exhibited signs of intolerance or made offensive statements. An information and computer examination could also reveal any electronic evidence relating to intolerance.
Keywords: investigation, hate crimes, intolerance, special knowledge, specialist, forensic examination, expert’s opinion.

Problem statement. Persons with relevant knowledge and skills in science and technology are involved in the identification, collection and analysis of trace information on the commission of intentional murders motivated by racial, national or religious intolerance. Their professional assistance makes it possible to compensate for the insufficiency or lack of the investigator’s own knowledge in specific fields, which, in turn, expands the possibilities of research and use of sources of evidence regarding such crimes. The effective solution of the tactical tasks facing the investigation, as well as ensuring an objective investigation of all the circumstances of the event under consideration, largely depend on the interaction of investigators with specialists in the relevant field, which plays a key role in conducting a complex and comprehensive pre-trial investigation.

Analysis of recent research and publications. For studying various aspects of the use of special knowledge, their place and role in the system of sources of evidential information, attention has been focused by scholars such as: V.I. Alekseychuk, M.V. Kostytsky, V.M. Kovbas, A.V. Sidelnikov, V.Yu. Shepitko, N.V. Tutecskaya, O.V. Vakanych, etc. However, the issue of the use of special knowledge in the form of involving an expert in criminal proceedings during the investigation of intentional murders motivated by racial, national or religious intolerance is still relevant are more specifically determined, firstly, taking into account the specifics of this category of crimes.

The article aims to determine the features of the use of special knowledge in criminal proceedings related to investigations of murders motivated by racial, national or religious intolerance.

Presenting main material. During the pre-trial investigation of intentional murders motivated by racial, national or religious intolerance, there is often a need to solve issues that require knowledge from various fields of science and technology, which investigators and prosecutors do not possess. Such acquisition of knowledge in the fields of criminal procedure and forensic science is called special knowledge. In this context, the methodology of investigation of this category of crimes should be considered, taking into account the peculiarities of the application of special knowledge.

In the scientific literature, special knowledge in the context of evidence in criminal proceedings is defined as a set of scientifically based information of a separate (special) type, possessed by knowledgeable persons (experts and specialists) in various fields of science, technology, arts and crafts, and in accordance with the norms of legislation use them for successfully solving the tasks of criminal proceedings [1, p. 190-191]. It should be noted that, in general, scientists do not object to the fact that it is expedient to attribute to special knowledge the
knowledge possessed by specialists and experts who are engaged by parties to criminal proceedings to clarify the circumstances to be established in criminal proceedings.

It should be noted that in legal literature, the term “special knowledge” traditionally refers to scientific, technical and other professional knowledge, including forensic knowledge, which was acquired in the course of training, as well as skills acquired during practical activities in specific fields. This knowledge is used together with scientific and technical means to search, identify, extract and investigate traces of a crime in order to obtain evidentiary and guiding information, which is necessary to establish the truth in criminal cases [2, p. 182].

According to O.V. Vakanych, the main forms of using special knowledge can include the following: 1) direct use of special knowledge by an investigator, investigating judge, court, prosecutor (Articles 22; 40; 46; 91-94; 214; 223; 228; 236-241; 245 of the Criminal Procedure Code of Ukraine); 2) participation of a specialist in conducting investigative actions (Articles 56; 68; 71; 72; 79; 122; 226; 227; 237-241; 252; 266; 327; 354; 360; 491 of the Criminal Procedure Code of Ukraine); 3) appointing and conducting forensic examinations (Articles 69; 70; 79; 101; 102; 122; 242-245; 327; 332; 486; 509; 518 of the Criminal Procedure Code of Ukraine) [3].

Therefore, the distribution of A.V. Sidelnikov seems to be more successful, he singled out the following main forms of using special knowledge in criminal proceedings: direct use of special knowledge by participants in procedural activities who are under an obligation according to the law or who are given the right of proof; use of special knowledge by specialists without involving them in criminal proceedings (consultations, obtaining certificates, etc.); the use of specialized knowledge by involving specialists in the collection, research, evaluation and use of evidence; the use of special knowledge through the involvement of forensic experts – persons who possess special knowledge and are engaged by the prosecution, the defense or the court to conduct a forensic examination, etc. [4, p. 143].

V.M. Kovbasa refers to the main goals of using special knowledge: facilitating full and quick disclosure and investigation of criminal offenses; establishing the truth in a criminal case; research of certain objects and phenomena; obtaining the necessary information to establish the circumstances that are important for correct, reasoned decisions in the case; assistance in identifying, recording and extracting evidence and clarifying special issues that arise during investigative actions; development of tactical and technical means and methods of gathering evidence, etc. [5, p. 228].

According to V.I. Alekseychuk, in criminal proceedings related to violent criminal offenses on the basis of racial, national and religious enmity, it is mandatory to involve specialists from various fields of knowledge, such as: religious studies, forensic psychology, forensic science, forensic medicine and specialists in the field
of interethnic relations. This helps to increase the effectiveness of the inspection of the scene of the incident and to identify and establish the essential circumstances of the committed criminal offense, especially those that may indicate the motive of intolerance. Ignoring the capabilities of specialists can lead to incomplete disclosure of information about a criminal offense, cause incorrect versions to be put forward, and also affect the quality of extraction and packaging of traces and objects. This, in turn, can make it impossible to conduct expert research and lead to the loss of evidence or its incomplete use [6, p. 80]. Also, it is advisable to add specialists in the field of linguistics, sociology, ethnology and theology to the specified list.

Arriving at the scene of the incident, specialists receive from the investigator the necessary information about the circumstances of the case, the actions of the inspection participants, carried out before their arrival, and also receive the tasks that must be solved. Next, they carry out the investigator’s instructions, aimed at using their special knowledge to study and analyze the situation. The Instructions defining the procedure for involving employees of pre-trial investigation bodies of the police and the Expert Service of the Ministry of Internal Affairs of Ukraine as specialists to participate in the inspection of the scene of the incident state that at the beginning of the inspection, the investigator together with the specialists determine the boundaries and procedure of the inspection, after which the specialist takes photographs and video recording of the scene [7].

At the crime scene, the forensic inspector, on the instructions of the investigator, conducts measurements, photographs, audio or video recording, makes prints and casts of existing traces, if necessary, draws up plans and diagrams, makes graphic images of the inspected crime scene or individual objects [8].

Special attention should be paid to forensic examinations that may be ordered and conducted during the investigation of intentional killings motivated by racial, national or religious intolerance.

Forensic examination, which is one of the main and most common forms of using special knowledge during a pre-trial investigation, is defined in scientific sources as a procedural action consisting in the examination of physical evidence, materials, other objects and persons with the aim of establishing factual data and circumstances, which are relevant for criminal proceedings by order of the investigating judge or court, provided at the request of a party to criminal proceedings, material evidence, materials, other objects, persons for the purpose of establishing factual data and circumstances relevant for criminal proceedings [9, p. 422]. The peculiarity of forensic examination, as a form of using special knowledge, is that pre-trial investigation and court bodies establish factual data that cannot be determined with the help of other investigative (search) actions and that are of significant importance for criminal proceedings.

According to Art. 1 of the Law of Ukraine “On forensic examination”, forensic examination is defined as research based on special knowledge in the field
of science, technology, art, crafts, etc., of objects, phenomena and processes with
the aim of providing a conclusion on issues that are or will be the subject of judicial
review. And Art. 71 of the mentioned Law regulates that the basis for conducting a
forensic examination is a relevant court decision or a decision of a pre-trial
investigation body, or a contract with an expert or an expert institution – if the
examination is carried out on the order of other persons [10].

According to Part 1 of Art. 242 of the Criminal Procedure Code of Ukraine,
the expert examination is conducted by an expert institution, an expert or experts,
who are involved by the parties to the criminal proceedings or the investigating judge
at the request of the defense party in the cases and in the manner prescribed by Art.
244 of the Criminal Procedure Code of Ukraine, if special knowledge is needed to
find out the circumstances that are important for criminal proceedings. And Part 2
Art. 84 of the Criminal Procedure Code of Ukraine specifies that the expert’s opinion
belongs to the procedural source of evidence [11].

N.V. Tuteckas noted that forensic examination can be considered as an
institution of evidentiary and procedural law, a system of procedural relations, a
form of using special knowledge, ISA, a research procedure and drawing up an
expert’s opinion [12, p. 357]. According to V.Yu. Shepitko, forensic examination is
a procedural action, which consists in the examination by an expert of physical
evidence and other materials on the task of an investigator or judge in order to
establish factual data and circumstances significant for the correct decision of the
case [13, p. 257]. M.V. Kostytsky noted that a forensic examination in a criminal
trial is a study conducted by an expert and the substantiation of a conclusion in
accordance with the law [14, p. 58]. According to O.Yu. Paladiychuk, forensic
examination is a study of objects submitted by the court or other participants in the
criminal process, and is conducted by experts with the help of special knowledge in
order to learn information about facts important for solving the case within the
framework of established legal rules [15, p. 88].

In general, examination in the investigation of crimes performs the following
functions: a) ensures obtaining new evidence; b) allows to include in the process of
proof factual data that are not available for organoleptic perception and research;
c) provides an opportunity to verify the authenticity of facts established by
organoleptic means; d) allows solving the problem of identification of people and
things by their material reflections [16, p. 341].

It should be noted that when appointing a forensic examination, it is necessary
to pay special attention to the questions posed to the expert. Because they ensure the
provision of quality information and the effectiveness of forensic examination.
Questions put to experts should not go beyond the expert’s special knowledge, nor
should they be of a legal nature. Therefore, it is worth supporting the opinion of
Ya.O. Kulyk, that it is important to consider several key aspects when asking
questions for the appointment of a forensic examination:
– the question must relate to the object and subject of the examination;
– the expert’s question must be asked precisely with an unambiguous and clear semantic content;
– a question to an expert should imply a specific answer to it [17, p. 4].

For example, in a court case No. 278/1904/17 dated September 27, 2021 of the Korolovsky District Court of Zhytomyr, the answer to the question: “Are there signs of self-defense and resistance on the corpse?” does not fall within the competence of a forensic medical expert, since the concepts of self-defense and resistance are not medical [18].

Usually, in criminal proceedings about intentional murders, the following types of examinations are prescribed: forensic medical examination, forensic psychological examination, forensic examinations: tracing, dactyloscopic, etc.

So, the essence of the forensic examination consists in a scientifically based study of material and materialized objects, which are provided to the expert to establish factual data related to the investigated event, as well as obtaining evidentiary information based on the results of such research in the form of an expert’s opinion. The analysis of judicial practice cases related to intentional murders motivated by racial, national or religious intolerance demonstrates that in all criminal proceedings of this category a forensic medical examination was prescribed, in some cases the following types of examinations were also prescribed: forensic toxicological examination, forensic histological examination, forensic molecular genetic examination, forensic medical examination, forensic psychological examination, forensic psychiatric examination, dactyloscopic examination.

The most widespread examination in the field of forensic medicine during the investigation of intentional murders motivated by racial, national or religious intolerance is the forensic medical examination.

Forensic medical examination is conducted for the purpose of research on the basis of special knowledge of material objects containing information about the circumstances of the case, which is being investigated by the investigative bodies, the investigator, the prosecutor or the court. Forensic medical examination is carried out in accordance with the decision of the person conducting the inquiry, investigator, prosecutor, judge, as well as by court decision [19].

The main type of forensic medical examination is always considered to be the forensic medical examination of a corpse. The object of this forensic examination is the corpses (parts of the corpse) of persons who died violently, suddenly or under unclear circumstances, as well as forensic medicine and psychiatry corpses of unidentified persons, which must be investigated as much as possible both at the scene of the incident and directly during the examination [20, p. 83].

The opinion of the expert No. 493 dated 29.06.2017 and No. 1727/43 dated 15.08.2017 in the court case No. 278/1904/17 dated November 20, 2023 of the Zhytomyr Court of Appeal indicates that testifies to the discovery of severe injuries
on the corpse of PERSON_15, which are directly causally related to the death of this person [21].

As part of the forensic medical examination of the corpse, a forensic histological examination is carried out. The specified type of research is mandatory and aimed at determining all pathological processes in human organs and tissues, establishing the nature and degree of age of damage, as well as detecting viral inclusions in human cells and organs. The objects of research are: pieces of organs and tissues of a corpse; taken during autopsy; pieces of fabric removed from crime instruments and vehicles; other objects of biological origin [20, p. 85].

As an example, we can cite the opinion of an expert in a court case No. 278/1904/17 dated September 27, 2021 of the Korolovsky District Court of Zhytomyr, where PERSON_15 died from a stab wound to the chest on the right with damage to the skin, subcutaneous fat, cartilage of the 6th rib on the right, parietal pleura, pericardium, right atrium of the heart, which was accompanied by acute blood loss-hemopericardium (accumulation of blood in the pericardium) and right-sided hemothorax (accumulation of blood in the pleural cavity), in a time interval of up to 0.5-1 hour, as indicated by the results of forensic histological examination [18].

Molecular genetic examination, which is used for the analysis of micro-objects and micro-traces, such as greasy washes of fingerprints, fragments of hair, drops of blood, saliva, bone fragments and other traces of biological origin, allows identification of a person at a higher level of accuracy. The methods of molecular genetic research not only make it possible to establish the identity or identify the differences of biological traces on physical evidence, but also determine the belonging of these traces to a specific person. In addition, these methods are used to establish or exclude blood relationships and identify unidentified corpses [20, p. 89].

Forensic medical examination in forensic toxicology departments is aimed at the study and identification of chemical substances in various objects of biological origin and other evidence. The conclusions of the main forensic medical examination of the corpse are based on the results of forensic histological and forensic toxicological studies [20, p. 86].

Psychological examination determines the peculiarities of mental activity and their manifestations in the behavior of a person, which have legal significance and lead to certain legal consequences. The objects of psychological examination include mentally healthy persons (suspect, accused, defendant, acquitted, convicted, witness, victim, plaintiff, defendant: minors after reaching the age of five; minors; adults and elderly).

The main task of the psychological examination is to determine the sub-expert person’s: individual psychological features, character traits, leading personality qualities; motivational factors of mental life and behavior; emotional reactions and states; regularities of the course of mental processes, the level of their development and its individual properties [22].
As for the forensic psychiatric examination, this type of examination is prescribed and conducted for the purpose of assessing the mental state of the accused in cases where there are circumstances that raise doubts about his sanity.

As an example, we can cite court case No. 278/1904/17 dated November 20, 2023 of the Zhytomyr Court of Appeal. In the mentioned case, the conclusion of the forensic psychiatric examination No. 213-2017, defined that PERSON_10 did not suffer from any mental illnesses in the past and does not suffer from them at present. The suspect is aware of the nature of the crime, as well as the possibility of punishment for such an act, consistently talks about the events of that day, describes his events and the actions of the victim before and after committing the crime, sticking to his own version, at the same time does not admit the fact of causing bodily harm to the victim, trying to shift the blame to others. PERSON_10 was able to realize the meaning of his actions and manage them during the time period to which the illegal acts incriminated against him belong, can realize the meaning of his actions and manage them at the present time. Due to his mental condition, he does not need coercive measures of a medical nature [21].

It should be noted that during the investigation of the researched category of crimes, in order to establish the presence of the motive of intolerance, it is also advisable to appoint and conduct a semantic-textual (linguistic) examination and an information-computer examination.

As for the semantic-textual (linguistic) examination, it is aimed at identifying extremist statements, xenophobic sentiments, calls motivated by racial, national or religious enmity. Thus, with the help of semantic-textual (linguistic) examination, it is possible to reveal negative aspects in the researched information, including the presence in it of calls to actions that can harm a person or a group of persons based on gender, race, nationality, language, origin, attitude to religion, belonging to any social group, as well as the presence of negative emotional expressions, hostile characteristics or images that insult the dignity of a person or group. During this research, the expert carefully analyzes the text or audio or video recording and determines whether the text contains negative judgments.

The semantic-textual examination reveals the meaning of concepts, lexical nuances of words and phrases, their stylistic use, semantic load, and also reveals calls to action, information of positive or negative content about persons, offensive statements and the nature of statements (can be a factual statement or an evaluative judgment).

The object of a semantic-textual examination can be both a text (speech) and its fragments, individual statements, words, inscriptions, text reproductions of oral speech, etc. Establishing the text content of conversations recorded in video and audio recordings is not a separate expert task, as it does not require the use of special knowledge [22].
As an example, we can cite court case No. 278/1904/17 of the Zhytomyr District Court of the Zhytomyr region, in which the accused during the fight turned to the victim with the words: “What are you, chock, shut up there?” “Get out, chock, I’m going to cut you!”. From the video recording of the accused’s conversation with the victim, before the latter’s murder, it can be seen that PERSON_7 had a conflict with PERSON_14 only because the latter, being a person of Azerbaijani nationality and not a Ukrainian, lived on the territory of Ukraine. The evidence of the guilt of PERSON_7 in committing the intentional murder of PERSON_14 is evidenced by the inspection protocol dated 15.08.2017, namely the disk with the video recording of the arrest of PERSON_7, during which the latter agreed that he cut the victim, calling him “black” and “chock” and indicated that, while running away, he threw away a knife in the forest [23].

The court file shows that the following types of examinations were conducted during the investigation of the said murder: forensic medical examinations, forensic molecular genetic examinations and forensic psychiatric examinations. Despite the fact that there was evidence in the form of video recordings of the accused’s conversation with the victim and his detention, a semantic-textual (linguistic) examination was not appointed for their study. In this case, with the help of a semantic-textual (linguistic) examination, it would be possible to confirm the presence of signs of intolerance towards a person of Azerbaijani nationality in the offender’s statements. Because the statements are offensive and threatening, and indicate a negative aggressive belief and national intolerance. In these statements, the person uses the offensive word “chock” and expresses the threat of physical violence (“I will cut you”). This is a manifestation of intolerance and discrimination based on nationality.

Thus, in criminal proceedings regarding the investigation of intentional murders motivated by racial, national or religious intolerance, the expert’s opinion based on the results of a semantic-textual (linguistic) examination provides an opportunity to confirm or deny the presence of signs of intolerance in statements during pre-trial investigation and court proceedings.

In connection with the development of the information society, an important role in gathering the evidence base of the specified category of crimes is played by the study of electronic traces, which may indicate the presence of a special motive for intolerance. Taking into account scientific studies concerning the expediency of conducting various types of forensic examinations in the investigation of intentional murders motivated by racial, national or religious intolerance, it is worth emphasizing the need to conduct an information and computer examination.

An information and computer examination is carried out for the purpose of searching, diagnosing, identifying, analyzing and evaluating computer information created, changed or destroyed by the user in the computer system. To carry out this examination, the expert is given the following objects that can be examined: PCs,
mobile devices, tablets, data carriers (hard drives, flash drives) or computer tools that have preserved traces of criminal activity. The expert can determine whether the provided object contains information in any form (files, audio, video, correspondence, posts on social networks, etc.) that relates to the presence of signs that may indicate the presence of a motive for intolerance. Also, the expert can establish whether the research object contains deleted files (graphics, text, video, audio) and whether it is possible to restore them.

Conclusions. Summarizing what has been said, we note that the most common forms of using special knowledge at the stage of pre-trial investigation of intentional murders motivated by racial, national or religious motives are technical assistance of specialists during procedural actions and the involvement of experts. At the same time, the greatest specificity is the involvement of forensic scientists and specialists in the fields of psychology, linguistics, sociology, ethnology, interethnic relations, religious studies, and theology.

The expert’s opinion is a procedural source of evidence according to criminal procedural legislation. The main types of forensic examinations prescribed in the investigation of intentional murders motivated by racial, national or religious motives include: in all cases – forensic medical examination, in some cases – forensic toxicological examination, forensic histological examination, forensic molecular genetic examination, forensic psychological examination, forensic psychiatric examination, dactyloscopic examination. During the investigation of the researched category of crimes, in order to establish the presence of the motive of intolerance, it is also advisable to appoint and conduct a semantic-textual (linguistic) examination and an information and computer examination.

References:


