

Some Directions of using the Forensic Odorology in the Field of the Fixing Evidences in the Pre-Trial Proceedings in Ukraine

Volodymyr O. Zarosylo^{1,*}, Tykhon S. Yarovoi², Volodymyr L. Grokholskyi³,
Victor O. Timashov⁴ and Rostislav K. Padalka¹

¹*Department of Law Enforcement and Anti-Corruption Activities, Educational-Scientific Institute of Law Named after Volodymyr the Great, Interregional Academy of Personnel Management, Kyiv, Ukraine*

²*Department of Public Administration, Interregional Academy of Personnel Management, Kyiv, Ukraine*

³*Department of Cybercrime and Information Management, Odessa State University of Internal Affairs, Odessa, Ukraine*

⁴*Department of Administrative, Financial and Information Law, Kyiv National University of Trade and Economics, Kyiv, Ukraine*

Abstract: All over the world, the issue of detecting crimes committed is the main task of the state and its law enforcement agencies. The detection of crimes and the prosecution of those who committed them are in most cases based on evidence gathered by law enforcement officers. The issue of evidence is also quite debatable, because the legislation of different countries perceives different aspects of evidence and the evidence itself. The article covers the issue of individual issues related to obtaining evidence with the help of specially trained dogs. These forms and methods were used by Ukrainian law enforcement officials during their stay in the international peacekeeping mission in Kosovo. Currently, some evidence-gathering issues can be used in the process of investigating and prosecuting criminals with trained dogs. However, this area is not widely used, as there are a number of both practical and regulatory, as well as legislative problems. This direction in the activities of the police and other law enforcement agencies is called forensic odorology. The issue of using dogs in the process of detecting and investigating crimes is quite controversial and they are used differently in different countries.

Keywords: Criminal procedure, crime, service dogs, cynological, application of service dogs.

INTRODUCTION

The doctrine of evidences which are the confirmation of a committed crime have been growing through the development of the criminal procedural law, criminology, criminal law and other applied sciences (Kovalchuk 2018). The development of this doctrine caused the gradual accumulation of empirical and theoretical material, the formation of the system of evidence, their classification and other areas that are closely related to criminology and the criminal process. In Ukraine, it is formulated in the legislation that the formation of evidence and evidence in general is entrusted to state bodies, and the state must first ensure security and order and investigate offenses and crimes, so accordingly the formation of evidence lies with state bodies (Holovatyi 2015). It should be noted that the development of the doctrine of evidence has gone through a significant number of stages, which later caused to the formation of their scientific definition. Most scientists define evidence as any factual data obtained in the manner that law prescribe, on the basis of which the investigator, prosecutor and

court establish the presence or absence of a socially dangerous act, the guilt of the person who committed the act, and other circumstances that are relevant to the effective resolution of the case (Stakhivskyi 2005). Thus, evidence is a source of data that is necessary for the process of forming the evidence. The classification of evidence has been carried out by many researchers not only in Ukraine but also in other countries (Saferstein 2006; Types of Evidence 2009).

In Ukraine, S.M. Stakhivsky (2005) proposed the following classification of evidence: according to the source of information – primaries, derivatives; in relation to the subject of the accusation – accusatory, acquittals; in relation to the circumstances subject to proof – direct, indirect; according to the mechanism of formation and carrier of evidentiary information – evidence obtained from people, evidence contained from objects and documents. It's important to note that this classification can be considered as the most complete and logically constructed. In criminology there are direct and indirect evidence. Direct evidence includes evidence that provides a direct unambiguous answer to the question of who could and has committed a crime, or indicate that a person could not have committed it. Direct evidence includes, for example, the testimony of a witness who witnessed a

*Address correspondence to this author at the Interregional Academy of Personnel Management, Ukraine; Tel: 098 227 5404; E-mail: vo-zarosylo@ust-hk.com.cn

robbery, the testimony of a victim of a criminal act, a video recording of a criminal offense and the actions of the offenders. Direct evidence in most cases indicates the presence or absence of circumstances of the main fact – the corpus delicti.

As for indirect evidence, they do not directly confirm the presence or absence of the main fact – the crime. They indirectly point to individual facts that relate to the main fact and on the basis of logical analysis of indirect evidence can be established only some certain elements of the crime, or their absence. They may also indicate intermediate facts or circumstances that confirm the presence or absence of the crime. At the same time, indirect evidence may not be used in the court session, because they do not confirm the events of the crime and the participation of the accused, they are uncertain, so the court may refuse to prosecute the accused, because doubts must be interpreted in favor of the accused. Both direct and indirect evidence are used in the process of proving guilt or acquittal of a person that is suspected of committing the crime. In this case, according to another qualification, the evidence is divided into accusatory and acquittal exculpatory relating to the accusation that is the subject of investigation, and consideration in a particular criminal proceeding (Farynnyk 2013). Accusatory is considered to be evidence that proves the accusation, and thus establishes primarily the existence of a criminal offense, as well as a direct link between the suspected or accused person, and the event of the crime, and acquittal evidence includes evidence that refutes the accusation, indicate the absence of a crime and the lack of connection between the accused and the crime. They may also establish other circumstances, such as those that may further lead to their use as mitigating circumstances if the crime took place.

MATERIALS AND METHOD

Different forms and methods of criminology are used to record evidence, especially traces, as already mentioned. The modern system of criminology is quite active in the process of fixing traces of crimes and solving crimes, are the result of the achievements of many sciences. It is needless to say about the use of computers and advances in medicine. In the modern criminology, various methods are used to detect, record, remove and preserve traces of crime. In the future, these traces may indicate the circumstances of the crime and the person accused of involvement in its commission, namely used as an evidence. As for the

classification of traces, they are classified on various grounds. These may be traces of hands, feet, teeth, which can be considered as direct evidence. Direct evidence is also evidence when certain objects, parts of clothing, shoes or other items belonging to the person accused of the crime are found at the crime scene and show that the person was in the place where the crime was committed.

It's important to note that it has been scientifically proven: each person has their own individual fingerprints, which can be direct evidence if they are found at the crime scene. Other human signs are also uncertain, but in most cases are correct. For example, it is the shape of the auricle. Quite often are used as an evidence such signs as facial shape, in some cases gait and other signs. They are not unique, but with the help of witnesses, photos and computer technology, such traces can be the direct evidence. A separate area for identifying and recording the evidence is the use of special odors in the investigation. It should be noted that the attempt of scientific argument and practical possibility of using odors in evidence in the detection and investigation of crimes by detecting them, in accordance with the requirements of procedural rules, conservation and further research for registration it as the evidence was made by A. Winberg (1967). He and other scientists introduced the concept of forensic odorology (Winberg 1967; Bilenchuk 1994).

RESULTS AND DISCUSSION

Today, the term "odorology" is widely used in forensics and is a system of knowledge about odors and odorous carriers, techniques, recommendations for detection, analysis, removal and storage of odor traces with the purpose of their further use in pre-trial proceedings and in court proceedings. It is important to emphasize that scientific research has not proven the question of clearly determining whether each person's smell is unique, but studies by some scientists show that it is unique and can be used to identify a person, and therefore for using it as an evidence (Curran *et al.* 2005). Computer technology is now used to identify people suspected of committing crimes, computers make it possible to identify a person accurately, and such identification becomes an undeniable evidence in the court. However, computer technology is used in the most cases for recognizing a person's face, gait and other features.

As for research of the use of human odor and the formation of the evidence base that is grounding on the

odor, they were practically not conducted, but in such cases in practice the service dogs are used. The dogs are specially trained in the relevant police centers. At the same time, there are still exist the problems in identifying traces of crimes and identifying those who committed crimes by odor. The issue of using service dogs is also quite controversial in the process of proving and forming the evidence base. In practice, during the pre-trial investigation, it is not uncommon to identify a suspected person with the help of a service dog by the smell and traces left by the offender at the scene of a crime. However, such cases are not often recorded. In some countries, the practice of using service dogs has been developed and applied in other forms for obtaining the evidence of the involvement of suspected persons in the commission of a crime. We are talking about the use of service dogs in establishing the identity by odor, the suspected person of the committing a crime, with the odor that was recorded at the scene of the crime.

In practice, there are cases when the offender used certain objects that had a peculiar smell or left certain items of clothing or other things that had a characteristic smell of the offender at the crime scene. Investigators and forensic scientists during the inspection of the crime scene may find the mentioned items of clothing, shoes and other things that may have belonged to the offender. Investigators and forensic scientists can record the smell that the found objects have and that may belong to the offender. Fixation forms provide for the placement of such items in a suitable airtight container to prevent weathering and destruction of the removed odor. In the future, in some cases, the service dogs, which are specially have been training to identify the smell of the found object and the smell of a person suspected of committing a crime can be used. The practical use of evidence-based service dogs, for the identification of a person's odor, was carried out by the service dogs of the United Nations International Peacekeeping Mission in Kosovo. This technique was described in the textbook "Preparation of candidates for the cynological peacekeeping unit of the Ministry of Internal Affairs of Ukraine" (Zarosylo 2005) and in separate manuals on the training of cynologists (Shutenko and Krasokha 2008).

The service dogs trained in Ukraine were used to obtain evidence with the help of a service dog, and used by the United Nations International Peacekeeping Mission in Kosovo. The specifics of the use of service dogs included the following steps. The forensic expert, who selected the object that by assumption belonged

to the criminal at the crime scene, recorded it, described it, and most importantly placed it in a hermetically sealed container. A person suspected of committing a crime, along with three or four other people usually lined up near a partition that did not reach the floor to a height of 30-40cm. Due to the fact that the locals of Kosovo were quite negative about dogs due to various reasons, the service dogs worked behind a partition and the persons who were identified did not see them. At the same time, the identified persons were asked, for example, to take off their shoes if a sock was found at the scene. If a piece of clothing was found at the scene, it was suggested to wear the clothing that was on the suspected at the time of the crime.

After that the identified persons were lined up at a distance of about one meter from each other, the forensic expert opened the container with the seized object at the crime scene and which presumably belonged to the person who committed the crime. The seized object was handed over to a cynologist, who let the dog sniff it. Later, the cynologist gave the command to start searching for a person. The container have been sealing again. For a clearer perception of the service dog what smell to look for, the operation of recognizing the odor could be repeated several times. The dog, on the command, walked slowly past the persons to be identified and, if it found a suitable odor, laid down next to the person suspected of committing the crime. In most cases, have been using dogs that were trained for finding the explosives. This was determined by the fact that this type of service dogs work quietly and without unnecessary movements and when finding the appropriate substance lies down or sits down opposite it. Witnesses and a lawyer were present during the investigation to confirm the authenticity of the evidence. After identification, all the present put their signatures, which confirmed the existence of indirect evidence. It was considered as an indirect evidence, because a dog can make a mistake.

Identification materials have been sent to the court and used in court proceedings in most cases as not direct evidence. However, in some courts these materials were used as direct evidence. It is important to emphasize that at that time there were no normative documents, that regulate the actions of cynologists and other participants in investigative actions in Kosovo, but lawyers did not dispute the receipt of evidence. Concerning modern application of use the service dogs in Ukraine and other countries in obtaining the evidence of the involvement the persons in crimes, it

will be possible when all questions towards the acceptability of evidence obtained with the help of dogs are removed. This is possible in the case of a clear regulation of the use of dogs in the relevant regulations. As for Ukraine, we believe that the provisions on the use of service dogs should be reflected in the Criminal Procedure Code of Ukraine. The Criminal Procedure Code of Ukraine currently lacks a chapter on the use of dogs to record evidence. It is possible to propose to change the Article 107 of the Criminal Procedure Code of Ukraine and add a paragraph on the use of dogs (Criminal Procedure Code of Ukraine 2020).

As the presence of a lawyer is mandatory when conducting investigative actions, his presence is also mandatory when conducting investigative actions with the help of dogs. In addition, when conducting investigative actions, it is necessary to regulate the presence of witnesses, whose signatures mostly confirm the fact of identification by dog of a person who may be involved in the commission of a crime. In our opinion, it is obligatory to record the investigative action, which is carried out with the help of video equipment. At the same time, the place of the investigative action should be illuminated so that all participants can clearly see all the movements and actions. It is also proposed to introduce special certificates for dogs that can participate in investigative actions for this purpose. If the defense party disagrees with the identification of the service dog by smell, the prosecution should have the right to re-identify the person using another service dog, which is also certified and can be used for such investigative actions. For the clearer identification of a person with the help of a dog, there may be a need for special certification for dogs, which should be carried out by a special commission. In this case, the certification should be carried out after a certain period of time, for example, after six months, because the dog's skills may be lost.

The defense should have the right to get acquainted with the relevant certificate for the dog and, if necessary, to test the dog in accordance with the developed methodology. Obligatory in this case is the fixation of the identification of a person with the help of dogs by special means of fixation, it is photo and video fixation, which can be used in a court after. If necessary, the court, as an exception, may order a forensic experiment, which should also include the identification of the person who committed the crime with the help of a dog. At the same time, the necessary conditions mentioned above must be created. This

technique is currently used in France, as evidenced by publications on the Internet. Some results are given in 2003 and 2016, odorology was used in 522 cases at the SDPTS and helped to resolve 162 cases (Olivier 2016).

However, French researchers and cynologists focus on evidence-based training of dogs in order to use them in odor identification. Training is carried out in most cases with Belgian and German shepherds, as it is recognized that these breeds have a fairly calm nervous system. The German shepherds are preferred because, according to research, they are more disciplined and attentive. However, other researchers claim that Belgian Shepherds are more suitable for training. Certain theoretical aspects of odorology and its application in forensic practice were made by the Hungarian researcher O. Horvath (2015), but the practice of such activities is more common in France. In the Russian Federation, this method is also being studied and analyzed. A special manual on forensic odorology and the use of dogs has been prepared (Forensic odorology... 2016; Sulimov 2019).

CONCLUSION

The use of dogs can be one of the additional methods of recording evidence in the investigation of crimes, but this method requires additional research and practical application. There is a need to develop special training methods for dogs that can be used to identify odors in criminal proceedings, and there is also a need for an appropriate system of certification of these dogs, which would provide the court with clear data to use them.

Dogs to be used must be periodically inspected and certified in the purpose to be able to perform their tasks during such investigative activities. Should be developed a nationwide system for the use of dogs in the process of identifying odors, which may belong to offenders and which should also be based on the practical application of this method and research. In order to more clearly define the evidence obtained in the process of using dogs, it is also necessary to amend the regulatory framework, determine the possibility of the presence of a lawyer and witnesses in the relevant investigative actions, their rights and responsibilities.

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