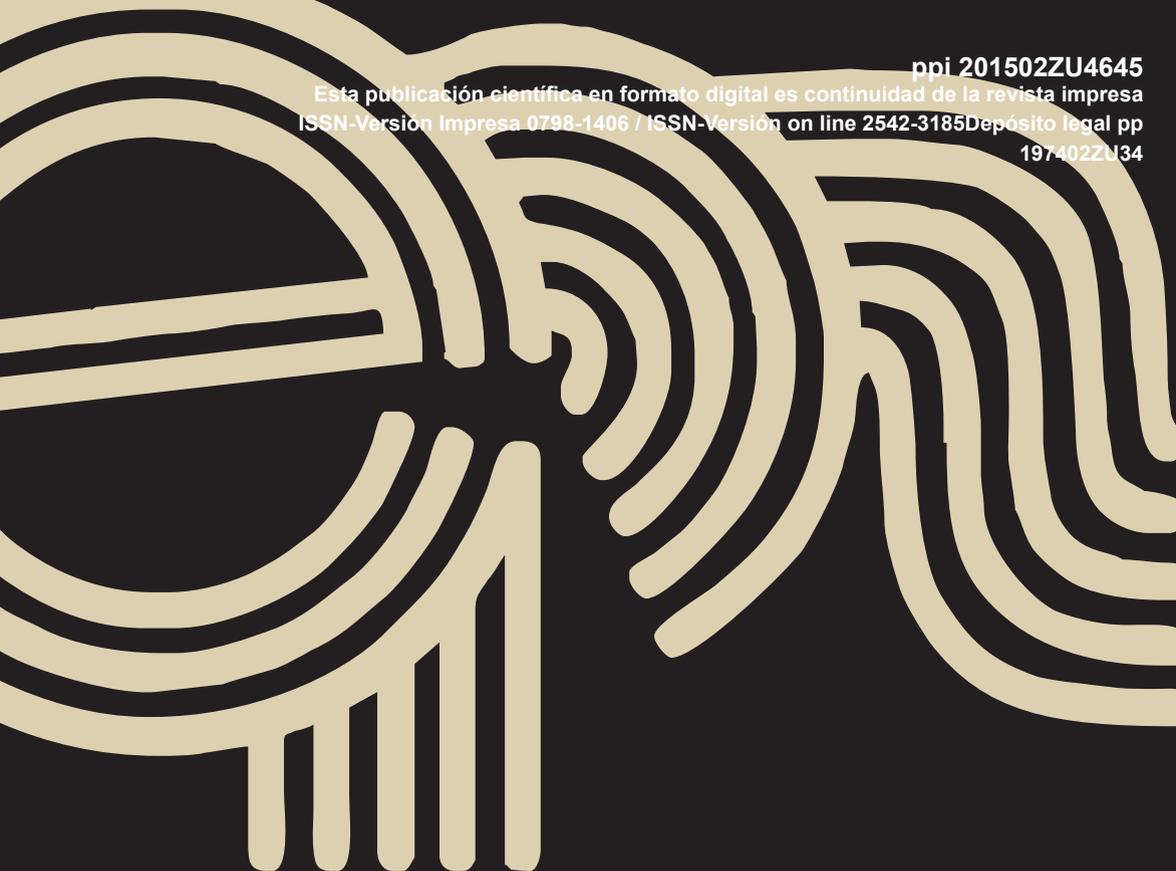


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de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
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Legal principles of polygraph use in the field of corruption prevention: international experience

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Albul Serhii *

Vladyslav Shendryk **

Oleksandr Horbachov ***

Serhii Penkov ****

Maryna Voloshyna *****

Abstract

The objective of the research was to consider the international experience of legal regulation of the use of polygraph in the field of corruption prevention. In this regard, the experience of the use of polygraph and polygraph studies in the activities of law enforcement agencies in various countries as one of the methods of preventing corruption was analyzed. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. It was concluded that the main areas of application of the polygraph are both the investigation of crimes (including criminal ones) and the fight against organized crime and also as one of the valid methods to prevent corruption, as well as to verify the reliability and integrity of applicants for positions in the police, prosecutors' offices, courts and other law enforcement agencies and, as far as possible, to ensure the seriousness and integrity of public servants who wish to occupy higher positions in their career path.

* Ph.D., Professor of the department of Operatively-Search Activities of the Faculty of training specialists for criminal police units, Odessa State University of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0002-3253-9225>.

** Doctor of Jurisprudence, Professor Honored Lawyer of Ukraine, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8967-7223>

*** Ph.D., Professor of the department of Operatively-Search Activities and crime detection of the faculty № 2, Kharkiv National University of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8113-3854>

**** Doctor of Juridical Science, Associate Professor of the Department of Law, Higher Private Educational Institution «Dnipro Humanitarian University», Dnipro, Ukraine. ORCID ID: <https://orcid.org/0000-0003-4044-5824>

***** Candidate of Juridical Science, Researcher at the Scientific-and-Educational Laboratory for the Research in Combatting Organized Crime and Corruption of the Educational and Research Institute of Law and training of specialists for the units of the of the National Police, Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9416-6885>

Keywords: corruption prevention; international experience in polygraph; polygraph examination; investigation of corruption offenses; verification.

Principios legales del uso del polígrafo en el ámbito de la prevención de la corrupción: experiencia internacional

Resumen

El objetivo de la investigación fue considerar la experiencia internacional de regulación legal del uso del polígrafo en el ámbito de la prevención de la corrupción. En este sentido, se analizó la experiencia del uso de estudios de polígrafo y poligrafía en las actividades de los organismos encargados de hacer cumplir la ley, en variados países como uno de los métodos para prevenir la corrupción. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Se llegó a la conclusión de que las principales áreas de aplicación del polígrafo son tanto la investigación de delitos (incluidos los criminales) como la lucha contra el crimen organizado y además como uno de los métodos válidos para prevenir la corrupción, así como para verificar la confiabilidad e integridad de los solicitantes de puestos en la policía, fiscalías, juzgados y demás organismos encargados de hacer cumplir la ley y, para garantizar en lo posible, la seriedad e integridad de los servidores públicos que deseen ocupar cargos superiores en su trayecto profesional.

Palabras clave: prevención de la corrupción; experiencia internacional en poligrafía; examen poligráfico; investigación de delitos de corrupción; verificación.

Introduction

Today, when the process of law-making activity in Ukraine is gaining rapid development, there are positive trends in bringing the legal system of Ukraine in line with international standards. Application of instrumental detection based on polygraph in various spheres of social relations is now a common phenomenon (Buha *et al.*, 2022).

Since law enforcement agencies are representatives of state power, their goal is to ensure well-being of each individual by combating crimes that encroach on the rights and freedoms of citizens (Bezpalova *et al.*, 2021).

The purpose of the article is to study experience of foreign countries in implementation of psychophysiological studies with the use of polygraph and to determine the place, role and possibilities of its use for obtaining evidentiary and guiding information in the activities of law enforcement agencies of Ukraine.

1. Literature review

The issue of the use of polygraph in law enforcement activities is not new in domestic science. Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna and others devoted their works to research of it (Halaburda *et al.*, 2021).

Obtaining information relevant to investigation of criminal offenses is the goal of law enforcement activities of any law-governed state. Search for new means and ways of obtaining and using evidential and orienting information is one of the urgent tasks of our state and is directly related to the use of modern achievements of the natural sciences and humanities.

Nataliia Volodymyrivna Ivanchuk notes: "... in foreign practice, one of the main areas of application of polygraph is the activity of law enforcement agencies in investigation of crimes" (Ivanchuk, 2015: 133). Polygraph as a means of obtaining and assessing reliability of such information received from an interviewed person by recording person's physiological reactions to questions has become an integral attribute of law enforcement agencies in many countries. Dozens of European countries and the USA use the polygraph both for crime prevention and for investigations and crime detection (Kobrusieva *et al.*, 2021).

However, due to the fact that the use of polygraph in law enforcement activities of Ukraine is not new, but the scope and possibilities of its use are continuously expanding, the study of the experience of foreign countries remains relevant and requires research.

2. Materials and methods

The study is based on works of foreign and Ukrainian researchers devoted to methodological approaches to disclosure of foreign experience in the legal regulation of using polygraph in the sphere of corruption prevention, etc.

With the help of the epistemological method, disclosure of the foreign experience in legal regulation of the use of polygraph in the sphere of corruption prevention, etc. was clarified; thanks to the logical-semantic

method, the conceptual apparatus was deepened, the foreign experience of the legal regulation of the use of polygraph in the sphere of corruption prevention, etc. was determined. Thanks to the existing methods of law, we managed to analyze disclosure of foreign experience in legal regulation of the use of polygraph in the sphere of corruption prevention, etc.

3. Results and discussion

Today, polygraph is used in more than 75 countries of the world, and the USA is the recognized leader among these countries. Investigations, tests and examinations with application of polygraph are used in the activities of law enforcement agencies in Belgium, Belarus, Bulgaria, Israel, India, Kazakhstan, Canada, China, the Baltic countries of Latvia, Lithuania and Estonia, South Korea, Poland, Serbia, Singapore, Slovakia, Slovenia, Finland, Croatia, the Czech Republic, Montenegro, Japan, Turkey, etc. At the same time, the use of the polygraph is prohibited in such countries as Australia, Austria and Germany.

Effectiveness of the use of the polygraph in activities of law enforcement agencies has been convincingly proven by the practice of activity in many countries of the world. These technologies have proven their feasibility and have been successfully used for a long time in the USA, Israel, Turkey, Poland, the Baltic States and other states, in particular during selection of a certain group of civil servants, internal investigations, pre-trial investigations as well as for disclosure and investigation of high-profile crimes (Cherniei, 2015).

Relying on the experience of law enforcement agencies of foreign countries domestic scientists single out three main approaches to determining the legal status of the results of applying polygraph for detection and investigation of criminal offenses. First of all, it is the categorical non-recognition of the results of applying polygraph for detection and investigation of criminal offenses as evidence in court (Estonia, the State of Israel, the Former Yugoslav Republic of Macedonia, Moldova, Singapore and Slovakia).

Secondly, it is the indirect recognition of the results of applying polygraph for detection and investigation of criminal offenses as evidence in court (India, Canada, Lithuania, Poland and Hungary). Thirdly, it is recognition of the results of applying polygraph for detection and investigation of criminal offenses as evidence in court (Latvia, Russia, Romania, the USA and Japan) (Povstianyi, 2014).

As noted by Y. I. Kholodnyi, in India, despite the restrictions set by the Evidence Code regarding the acceptance of polygraph results by the court,

the courts do not deny the possibility of conducting a polygraph examination by a polygraph examiner who is not a police officer, and sometimes they accept the results of such polygraph examinations for consideration.

In the beginning of the 21st century. in the forensic laboratories of the Japanese prefecture police departments, tests were carried out with the help of about 70 polygraph examiners, while about two-thirds of the said laboratories were provided with specially equipped rooms for polygraph testing. Police units in Japan have a long-standing practice of using polygraph. Inspections by law enforcement officers with the use of this scientific and technical device began in this country in the early 1950s. (Ivanchuk, 2015).

In the procedural aspect, data obtained during such inspections have begun to be taken into account in the Japanese judicial system since 1959. In 1968 The Supreme Court of Japan was the first one in the history of legal proceedings to approve the opinion of an expert based on the results of a polygraph examination as evidence in an investigation.

In its decision, the Supreme Court of Japan systematized the requirements for information obtained with the help of a polygraph so that this information could acquire the status of admissible evidence in court proceedings; in particular these requirements include the following: examinations should be carried out using a standard device, by means of the established and approved testing methodology; the mental and physiological conditions of the person being examined must meet the pre-established requirements; examinations must be performed only by a qualified polygraph examiner; the results of polygraph examinations must be presented in a qualified way.

These and other similar requirements are characteristic of law enforcement systems in other foreign countries.

The practice of applying polygraph by the Japanese police has allowed their National Police Agency to define a mandatory standard for its use (Ivanchuk, 2015)

The main constitutional principle of using polygraph in Ukraine and foreign countries in any sphere consists in the voluntary nature of the examination procedure. No person may be subjected to a polygraph examination, unless his/her written voluntary consent to this procedure has been previously obtained. Such a consent is drawn up in the form of a statement which filled out by the examined person with his/her own hand. This statement should explain the rights and obligations of the examinee (Leheza *et al.*, 2022).

If a person refuses to sign a voluntary consent to a polygraph examination, the reasons for refusal are indicated in the document and, accordingly, a polygraph examination is not conducted.

Foreign experience shows that in law enforcement practice, polygraph examinations are usually used not in the interests of obtaining judicial evidence for making a decision on the respective case, but for the purpose of assisting the investigator in choosing a more promising and somewhat justified direction of his/her work (Ivanchuk, 2015).

In the USA, Canada, Israel and European countries, the traditional tasks solved with the help of polygraph examinations include the following: narrowing down the circle of suspects, establishing the fact of the commission of a crime, creating conditions for obtaining truthful testimony, gathering additional information about the crime under investigation.

Most often, the results of such studies are not used for the purpose of obtaining evidence, but for gathering orientation information that can help in choosing the most promising and justified direction of investigation.

A polygraph examination during investigation of criminal offenses gives the following opportunities: acquit persons who are not guilty of the event and are not involved in it; determine the circle of persons involved in the event; find out the location of stolen property; in some cases - to induce the guilty person to testify.

Application of a polygraph makes it possible to objectify those external manifestations of a person's mental processes, which are usually overlooked by an operational or investigative officer, etc. The approximate nature of polygraph application results allows us to talk about the possibility of considering the specified measure in the context of investigative activities and the struggle against crimes (Povstianyi, 2014).

In modern practice, the use of a polygraph during detection of crimes is based on the physiological reactions of the interviewee, it provides psychological conclusions about his/her awareness or lack of awareness, involvement or non-involvement in the crime, etc. (Tylchuk *et al.*, 2022).

The main areas of using polygraph examinations in the activities of law enforcement agencies are as follows: identification of a person involved in the commission of a crime from among several known suspects; establishing the *corpus delicti*; establishing the roles of accomplices in the commission of the crime by a group of persons; establishment of separate circumstances of the crime commission; detection of hiding places of corpses, money and valuables obtained by crime, detecting instruments of crime and objects of criminal encroachment and vehicles, establishing the location of the missing and wanted persons; detection of facts of false testimony etc.

The use of polygraph is not a new direction in the activity of law enforcement agencies of Ukraine. The Security Service of Ukraine has been using polygraph examinations for more than fifteen years. Experience of applying polygraph has proven its high efficiency and usefulness not only

for detection and investigation of criminal offenses, but also in the sphere of personnel work (Povstianyi, 2014).

The collected empirical material of domestic and foreign investigative and judicial practice based on the results of using polygraph during investigation of crimes gives grounds for asserting the need to use this scientific and technical support during the procedure of investigation. The investigator must entrust the psychophysiological polygraph examination and, in particular, the expert conducting this examination, a clear task which will become the basis for building his/her logically based tests of interviewing individuals.

On the basis of a comprehensive, complete and objective examination, the expert will further form his/her expert opinions in such a way that they are of significant importance as a source of evidence at the stage of the criminal case trial (Motliakh, 2011).

Investigations with a use of a polygraph in Ukraine are conducted on the basis of the provisions of a number of regulatory acts. However, there is no single legal act in Ukraine that would provide for a definite procedure for applying this device, methods and techniques of conducting examinations, conducting interviews, etc. Despite the absence of laws on the use of polygraph, it is more actively used by law enforcement agencies of Ukraine in the context of combating crime (Kolinko *et al.*, 2019).

In many countries, there are laws that regulate the use of polygraph. Since Ukraine is entering the world market and world organizations, we believe that our country should have laws that would provide for the procedure for the use of this device precisely by law enforcement agencies. This will contribute to ensuring the well-being of Ukrainian citizens, as the state will be rich only when the legal rights, freedoms and interests of members of its society are protected and satisfied; and this will also serve to building a united Ukraine (Matviichuk *et al.*, 2022).

The experience of the Ministry of Defense of Ukraine is that candidates for leadership positions in the Ministry of Defense, as well as volunteers at this Ministry, are examined with the help of polygraph in accordance with the approved Anti-corruption program; according to this program all employees and applicants for positions in the Ministry of Defense of Ukraine must undergo mandatory examinations (Villasmil Espinoza *et al.*, 2022).

In many foreign countries, the training of polygraph examiners is provided for in the departmental education system, which is also characteristic of the National Academy of Internal Affairs, which has the appropriate potential, has gained experience in this field and provides training of polygraph examiners with the involvement of employees of practical divisions of internal affairs bodies and instructors of specialized officially registered private companies (Cherniei, 2015).

Conclusions

Summarizing, it is worth noting that a long-standing practice of using polygraph is typical for countries such as: Japan, the USA, Canada, Israel. The main tasks solved with the help of polygraph examinations are as follows: narrowing down the circle of suspects, establishing the fact of the commission of a crime, creating conditions for obtaining truthful testimony, gathering additional information about the crime under investigation.

Most often, the results of such studies are not used for the purpose of obtaining evidence, but for gathering orientating information that can help in choosing the most promising and justified direction of investigation. Foreign experience shows that in law enforcement practice, polygraph examinations are usually used not in the interests of obtaining judicial evidence for making a decision on the respective case, but for the purpose of assisting the investigator in choosing a more promising and somewhat justified direction of his/her work.

The practice of applying polygraph in various spheres of life in Ukraine is still relatively new. However, the use of polygraph in activities of law enforcement agencies of Ukraine has prospects for application of this device both for investigation of offenses (including criminal ones) and fight against organized crime, and for checking reliability and integrity of applicants for positions in the police, prosecutor's offices, courts and other law enforcement agencies, as well as for checking reliability and integrity of civil servants who want to occupy higher positions.

We believe that it would be appropriate to regulate the procedure for conducting polygraph examinations (interviewing or check) and for using materials of such examinations in criminal proceedings.

The issue of training polygraph specialists and staffing law enforcement agencies with such specialists should be resolved separately. The legislation must clearly regulate the requirements for persons who have the right to conduct psychophysiological examinations using a polygraph, as well as the procedure and grounds for obtaining permission to carry out the above-mentioned actions. After regulatory settlement, it will be possible to use polygraph in law enforcement practice alongside with other technical means, which improve the effectiveness of law enforcement agencies in achieving their goals.

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497

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