

REVIEW ARTICLE  
PRACA POGLĄDOWA**USE OF MEDICAL KNOWLEDGE BY A SPECIALIST IN THE INVESTIGATION OF PREMEDITATED MURDER COMMITTED IN A STATE OF STRONG COMMOTION**

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LVIV STATE UNIVERSITY OF INTERNAL AFFAIRS, LVIV, UKRAINE**ABSTRACT**

**Introduction:** The results of court practice generalization convincingly indicate that a group of special medical knowledge in the frame of involving a specialist in the procedural actions is an important component of the system of specialized knowledge using during the investigation of murder committed in a state of strong commotion. Moreover, this knowledge is accumulated in psychology and psychiatry areas.

**The aim:** of the article is to determine the procedural status of a specialist in the criminal procedural legislation of certain countries of the European Union, and, on the basis of comparison with the Ukrainian legislation, to establish his role in procedural actions; coverage of procedural and forensic aspects of using specialized medical knowledge in the form of involving a specialist in the procedural actions during the investigation of murder committed in the state of strong commotion.

**Materials and methods:** The materials of the study are 67 court decisions on premeditated murder commission, including those in the state of strong commotion, passed by the courts of Ukraine and Poland during 2007-2019, and the results of survey of 23 employees of the pre-trial investigation bodies of the National Police, operative units, public prosecutor's office and certain psychiatrists and psychologists involved in the investigation of relevant crimes in Ukraine; statistical reports of the Prosecutor General's Office of Ukraine for the period of 2013-2019 concerning registered criminal proceedings on this relevant crimes.

Methods, used in the study are dialectical, systemic-structural, formal-logical, sociological and statistical.

**Conclusions:** The analysis of forms and directions of special knowledge using allows us to establish the fact that involving a specialist in the field of psychology or psychiatry in procedural actions by means of special medical knowledge during the investigation is of particular importance. More likely it will help to establish the state of strong commotion of a person who committed premeditated murder as a reason for qualifying his/her actions under the privileged crime (*corpus delicti*) provided for by Article 116 of the Criminal Code of Ukraine.

**KEY WORDS:** specialist, premeditated murder, the state of strong commotion, a psychiatrist, a psychologist

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**INTRODUCTION**

During the pre-trial investigation it is important to identify all the circumstances to be investigated, in the first place the ones that may affect the qualification of the criminal offense. In particular, while criminal proceedings against a person suspected of premeditated murder, it is necessary to establish the fact of the state of the suspect's strong commotion during the crime act, since, for example, in the Article 148 § 4 of the Criminal Code of the Republic of Poland, the Article 130 of the Criminal Code of the Republic of Lithuania, the Article 120 of the Criminal Code of the Republic of Latvia as well as in the Article 116 of the Criminal Code of Ukraine, it is provided a special privileged qualification of premeditated murder and related mitigation of criminal liability. It is important to note that the investigator by himself does not have sufficient knowledge to solve situational, diagnostic, identification issues related to determining the likelihood of a specific psychological condition (physiological affect) of suspect at the time of causing death to another person, establishing the fact of sudden occurrence of such a situation as a result of the victim's unlawful acts.

Due to the recent researches, in order to understand how instant mental states activate other mental states, there is the idea that network structure of mental states is closely linked to the structure of vulnerability underlying psychopathology. For example, the scientists Re M. L. and Wigman J. T. found that the connection between instant emotions is stronger for individuals with depression than for healthy people [1; 2]. Subsequently, Wichers M. M. and Groot, P. C. determined that the increase in connection in the network structure of mental states had preceded the significant increase in the level of a person's depressive symptoms in the course of time [3]. It is impossible to establish mental states that cause the state of strong commotion without the use of specialized knowledge during the pre-trial investigation. Therefore, there is a need to involve persons with relevant medical knowledge that are able to carry out necessary examination and issue qualified conclusions.

According to the Prosecutor General's Office of Ukraine, the number of registered criminal proceedings under the Article 116 of the Criminal Code of Ukraine in 2013

was 13; in 2014 - 4; in 2015 - 7; in 2016 - 11; in 2017 - 5; in 2018 - 6; in January-August of 2019 - 1 [4]. However, this number of homicides cannot be considered as a final one, since the fact that the emotional state of the offender during the pre-trial investigation and the trial was properly assessed cannot be totally excluded.

Besides, during the analysis of the decisions passed by the courts of Ukraine under the Article 116 of the Criminal Code of Ukraine, it was found that in 57% of the cases the court carried out a re-qualification of the act which was qualified in the pre-trial investigation from the Article 115 of the Criminal Code of Ukraine (premeditated murder) to the Article 116 of the Criminal Code of Ukraine.

Thus, **the aim** of the article is to determine the procedural status of a specialist in the criminal procedural legislation of certain countries of the European Union, and, on the basis of comparison with the Ukrainian legislation, to establish his role in procedural actions; coverage of procedural and forensic aspects of using specialized medical knowledge in the form of involving a specialist in the procedural actions during the investigation of murder committed in the state of strong commotion.

## MATERIALS AND METHODS

Methods, used during the study, are dialectical, systemic-structural, formal-logical, sociological and statistical.

Scientists researches in the field of forensic medicine, psychology, psychiatry, expert science, as well as criminalistics, criminology, criminal law, criminal procedure law and other areas of scientific knowledge related to the problem of combating crime became the theoretical basis of the article.

The materials of the study are 67 court decisions on premeditated murder commission, including those in the state of strong commotion, passed by the courts of Ukraine and Poland during 2007-2019, and the results of survey of 23 employees of the pre-trial investigation bodies of the National Police, operative units, public prosecutor's office and certain psychiatrists and psychologists involved in the investigation of relevant crimes in Ukraine; statistical reports of the Prosecutor General's Office of Ukraine for the period of 2013-2019 concerning registered criminal proceedings on this relevant crimes.

Methods, used in the study are dialectical, systemic-structural, formal-logical, sociological and statistical.

## REVIEW AND DISCUSSION

The Ukrainian legislation in the Article 116 of the Criminal Code of Ukraine provides criminal responsibility for the commission of premeditated murder committed in a state of strong commotion caused by the violent treatment or the one that demeans person's honor and dignity, as well as the presence of a systematic nature of such treatment by the victim [5].

The Criminal Code of Poland provides for the privileged qualification of premeditated murder, committed in a state of strong commotion, provoked by justified circumstances

(Article 148 § 4 of the Criminal Code of the Republic of Poland) [6]. The Latvian legislator in the Article 120 of the Criminal Code of the Republic of Latvia provides the responsibility for the homicide, committed in a sudden emergence of a state of strong commotion, caused by the violence or grievous abuse by the victim [7]. Article 130 of the Criminal Code of the Republic of Lithuania defines homicide committed in a state of sudden strong mental commotion caused by the victim's unlawful act or a particularly grievous abuse to him or his beloved people [8].

As to the positions, expressed in the acts of the judiciary on the notion of "state of strong commotion" in Poland, it should be noted that the courts have repeatedly drawn attention to this concept. Thus, the Krakow Court of Appeal stated that "strong commotion is a state of physiological influence, in which emotions, which a guilty person gets due to a particular motivational situation, limits the controlling function of intellect" [9]. In the judgment of the Lublin Court of Appeal, it is said that "the nature of commotion (physiological affect) is characterized by the fact that the emotional process, experienced by the offender due to a particular motivational situation limits the controlling function of the mind" [10]. In the judgment of the Gdansk Court of Appeal it is stated that "in the situation, determined by the Article 148 § 4 of the Criminal Code, it goes about the excitement of the highest intensity which, obviously, goes beyond the ordinary and the average arousal in such a way that emotional experiences dominate the intellectual becoming the reactions to external facts that are extraordinary" [11].

The Ukrainian courts use similar approach. In the judgment of The Supreme Court of Ukraine/Criminal Court of Cassation of Ukraine in the case № 234/8200/16-k dated by August 29, 2018, it is said that "strong mental commotion (physiological affect) is a sudden emotional process caused by the victim's behavior which proceeds quickly and violently and, to some extent, reduces a person's ability to be aware of his actions and to manage them". A state of strong mental commotion is recognized as the one that occurred suddenly, the process of occurrence and course of which is characterized by unexpectedness, evanescence, turbulence, and transience. The separation of premeditated murder from an intentional homicide committed in a state of strong commotion is carried out both on the objective and subjective side of these crimes. Particularly, when qualifying a crime under the Article 116 of the Criminal Code of Ukraine, a socially dangerous act of a person is provoked by violence, systematic abuse or grave abuse by the victim [12].

In the judgment of the Hrebinka District Court of the Poltava region it is stated that "the physiological affect does not indicate insanity, as it is not a kind of morbid state of mind" [13].

Also, a state of strong commotion has repeatedly become a platform for scientists' discussion. For example, according to Reid Griffith Fontaine in the US criminal law the trial requires the suspect to demonstrate that he has been strongly provoked and, as a direct result of the provoca-

tion, extremely emotionally disturbed, so has committed a homicide being in this uncontrolled state. Thus, partial considering of emotional dysfunction is taken; the unlawfulness of murder is mitigated when emotionally charged reactivity limits the killer's ability to rational thought and reasoned behavior [14].

In the Encyclopedia of Behavioral Medicine, a state of strong commotion refers to affective states that may differ in various ways, including their duration, intensity, specificity, pleasantness and arousal level. They play an important role in regulating cognition, behavior, and social interactions [15].

Thus, we see that the notion of a specific emotional state is reflected in the procedural acts and scientific literature of many European countries, the approaches to which are, in most cases, similar.

It should be noted that in the investigation of premeditated murder in a state of strong commotion along with obtaining evidential information during investigative (search) actions, one of the ways of obtaining actual data is the use of special knowledge in the form of involvement of a specialist and an expert. This position is confirmed by the results of practitioners' questioning, in particular, the staff of the pre-trial investigation bodies of the National Police of Ukraine, the employees of the operational units and the public prosecutor's office, who identified the importance of special knowledge using in the form of expert involvement - 59% and a specialist involvement - 41% respectively in the pre-trial investigation of criminal proceedings.

The involvement of a specialist and an expert in criminal proceedings has a lot of similarities. In particular, they are involved when it is needed to use their specialized knowledge. However, the knowledge and skills of a specialist are used only to assist in the detection, consolidation and extraction of evidence, in conducting of procedural actions and examining of evidence in the court, in the use of technical measures during investigative (search) and judicial actions. He may provide explanations regarding special issues arising during the conduct of investigative (search) actions or during the judicial investigation, as specified in the Article 71, paragraph 2 of the Criminal Procedural Code of Ukraine. The results of his activities are reflected in the report of the investigative (search) action and in the court log, as well as in the annexes to them in the form of plans, diagrams, charts, schedules, etc. [16].

The involvement of a specialist in certain procedural actions is also regulated in a number of criminal procedural laws in Europe. According to § 1 of the Article 205 of the Criminal Procedural Code of Poland, a specialist is empowered with most of the powers delegated to an expert with the exception of the Articles 193, 197, 200, 202 and, if needed, an expert may be interviewed as a witness (§ 2 of the Article 206 of the Criminal Procedural Code of Poland) [17].

Therefore, it should be assumed that in accordance with the Article 205 of the Criminal Procedural Code of Poland, both expert and a specialist have specialized knowledge with the difference that the expert is included

in the special list (registry) of experts, but the specialist is not. In addition, the expert carries out the activity on the basis of the collected evidence, and the specialist actually gather them [18].

According to the Article 113 of the Criminal Procedural Code of Latvia, a specialist is a person who provides assistance with the use of his specialized knowledge or skills in a particular field. Thus, the specialist is obliged: 1) to join at the time and place specified by the official and participate in the investigative action if the procedure for his involvement is followed; 2) to assist in conducting an investigative action using his knowledge and skills, but without conducting practical research looking for the traces of a criminal act, finding out facts and circumstances, as well as fixating the course and results of the investigative action; 3) to pay attention of the officials in the course of their investigative action to the circumstances relevant for the identification and understanding of the circumstances; 4) not to disclose the content and the results of the investigative action if he is specially warned about its non-disclosure [19].

In our opinion, the most complete and accessible procedural status of a specialist is described in the Article 89 of the Criminal Procedural Code of the Republic of Lithuania, where it is established that the specialist is a person with necessary special knowledge and skills, who is assigned to examine the object and draw his own conclusion or explanation of issues that fall within his competence. A specialist, as well as in the Criminal Procedural Code of Poland, may be an official of the pre-trial investigation or investigation bodies, as well as the persons who do not work there. Also, the Lithuanian legislature made a designation. In accordance with Part 3-4 of the Article 89 of the Criminal Procedural Code of Lithuania court medical examiners are specialists who carry out examinations of a human body or corpse; forensic psychiatrists and forensic psychologists are specialists who conduct examinations of a person's mental state. Regarding the duties of a specialist, the specialist is obliged to come upon request of the investigative authorities, the pre-trial investigation, the prosecutor or the court; to issue independent conclusions, give the explanations on special issues that arise during the conduct of investigative action. According to the Article 235 of the Criminal Code of Lithuania, the specialist is criminally liable for making deliberately false conclusions and providing false explanations [20].

Conducting of the examination is an independent activity of an expert. He deals with the collected evidence. By examining them he establishes a new evidence and makes the conclusion which is a detailed description of the research conducted by the expert and the conclusions drawn from its results, substantiated answers to the questions asked by the person, who had invited the expert (Article 69, 101 of the Criminal Procedural Code of Ukraine; Article 200 of the CPC of Poland; Article 88 of the Criminal Procedural Code of Lithuania; Article 33 of the Criminal Procedural Code of Latvia).

Thus, in our opinion, the main purpose to engage a specialist is to expand the practical capabilities of an



investigator, prosecutor in the detection, extracting and recording of evidence during investigative (search) actions to establish the truth in criminal proceedings.

In general, it should be noted that the activity of two procedurally independent persons (specialist and expert) in the investigation of criminal proceedings on premeditated murder committed in a state of strong mental commotion is essential and is a key to prompt, complete and impartial pre-trial investigation.

During the study we conducted a survey of employees of the National Police bodies' investigative units, operational units, public prosecutor's office and individual psychologists and psychiatrists. As a result, it was found that due to special medical knowledge during the investigation more than 61.3% of the respondents preferred to involve psychologist or psychiatrist specialists to conduct procedural actions involving a suspect in the types of criminal offenses we are investigating. The results convincingly indicate that a group of special medical knowledge in the frame of involving a specialist in the procedural actions is an important component of the system of specialized knowledge, used during the investigation of premeditated murder committed in a state of strong commotion. Moreover, this knowledge is accumulated in such areas as psychology and psychiatry.

Also, cognition in psychology is more often needed to solve various issues that arise when conducting certain investigative (search) actions. Thus, when examining the scene of a crime, the knowledge of psychological patterns allows to put forward thorough investigative versions, to predict the most probable motives for the crime, personal, psychological qualities and the status of the offender; to identify during the search the most likely places and methods of concealment, which is related to the study of the psychological characteristics of a suspect, such as his interests, hobbies, knowledge, character, emotional qualities, his psychophysical reactions during the procedural action. The tactics of interviewing the victim, witnesses, suspects and accused are largely determined by the ability to understand and evaluate the psychological qualities and condition of the persons being questioned [21, 158].

The use of specialized medical knowledge at the stage of the pre-trial investigation of premeditated murder committed in a state of strong commotion in most cases involves specialists and experts in the field of psychology or psychiatry by the investigator in conducting various types of investigative (search) actions. Therefore, in our research we focused on the study of the use of specialized knowledge in the form of involving a specialist, such as a psychologist or a psychiatrist, to the conduction of procedural actions.

As already have been mentioned, the first and foremost investigative (search) action of the specified type of criminal proceedings is the inspection of the scene. Involvement in this investigative action of specialists in the field of psychology optimizes the process of investigation. The knowledge of psychology or psychiatry when inspecting the scene makes it possible to emphasize the existence of

certain circumstances that indicate the course of the crime actions; allow you to analyze the factors that indicate cause of death – suicide or murder; help to evaluate the mental state of the victim as being likely to lead to suicide; identify the factors that could have influenced such decision that led to such act; find out personality traits, level of balance, vitality, worldview, attitude to life and others etc. Also, in the further investigation, the knowledge of this specialist will help to establish the connection between the victim and the offender.

Besides, when investigating the premeditated murder, the psychologist or psychiatrist may be involved in communicative investigative (search) activities, such as interrogation or investigative experiment. After all, according to our analysis of criminal proceedings, in 60% of cases during the interrogation of the suspects they did not remember the events related to the crime. For example, by the verdict of the Hrebinkov RS of the Poltava region on July 27, 2019, a woman was convicted of 13 stabbing of her son with an ax blade and two stabbing in the torso, the last of which caused an immediate death. Her interrogation shows: "30.04.2018 night, when her son once again demanded alcohol from her, pushed her on the sofa, swearing at her, grabbed her by the throat, she pushed him onto the sofa, then ran to the kitchen for the water for him and saw the kitchen ax in the kitchen; she took it and returned to the room, hit her son with the ax hat once in the head, after which he started to rise; she was frightened and hit him again like she had hit him already. After that she did not remember anything and waked up have found herself on the floor of a bathroom with severed veins, there were many people near; she saw the knife only when it was lying in the sink" [13].

In our opinion, a psychologist should be invited to conduct the interrogation of the suspect. These specialists create a psychological portrait and give investigators their recommendations on interrogation tactics. Proper organization of this activities will help the investigator to solve a number of practical tasks: to analyze the materials of the proceedings, examine the person of the interviewee, predict and plan the process of communication and possible behavior of the person, overcome the negative emotional state and barriers of communication for establishing psychological contact, provide recommendations to the investigator regarding interrogation tactics, etc. [22, 20].

During the interrogation of the suspect or simultaneous interrogation with the participation of the suspect, a psychologist or a psychiatrist can help the investigator to formulate the questions taking into account the psychological characteristics of the interrogation participants, work out with the investigator the most effective tactics of interrogation and simultaneous interrogation of two or more interviewed, help to create informal atmosphere, eliminate alertness, distrust to law enforcement agencies. The interaction of the investigator with a psychologist or psychiatrist during the interrogation is essential to establish a psychological contact between the interviewee and the investigator, without which it is impossible to find the truth in criminal proceedings. During the interrogation the spe-

cialist may, with the permission of the investigator, ask the other participants of the investigative (search) action. The activity of a specialist psychologist or a psychiatrist helps the investigator to establish that the suspect or accused was in a state of strong commotion at the time of committing the crime, in the presence of such obligatory signs as suddenness and occurrence as a result of unlawful violent acts of systematic abuse or severe abuse. The investigator with the help of a specialist should find out interviewee's personal assessment and subjective perception of the situation, in which he has a corresponding emotional reaction to the violent treatment or the one that degrades the person's honor and dignity by the victim.

During the investigative experiment with a suspected person in premeditated murder committed in a state of strong commotion, in our opinion, one should also involve a psychologist or a psychiatrist, since demonstrating and describing of the crime circumstances could be a stressful condition for a person, and he or she will not be able to fully explain the circumstances of the act. The involvement of a psychologist or a psychiatrist during the investigative experiment is also useful because their joint actions with the investigator in obtaining additional information can enhance tactical technique by the doctrine of psychology about the dependence of memories on human activity. Its essence is that the person at the suggestion of the investigator reproduces on the spot only what he remembers. During such reconstructions it is often possible to revive person's memory to such extent, that the investigator receives very detailed information about seemingly completely forgotten facts. The person not only remembers certain facts but also corrects them, rejecting everything that does not corresponds with the real situation, specifies certain information and gives justification for that was reported during the interrogation. Therefore, the involvement of a psychologist or a psychiatrist in this case is mandatory.

## CONCLUSIONS

We've conducted a study of the concept of a state of strong commotion reflected in a number of criminal laws of Europe. We have also established the presence of a procedural figure – a specialist in the Criminal Procedural Codes of Ukraine, Poland, Lithuania and Latvia, whose activity in most cases is similar and is called upon to play an auxiliary role during pre-trial or judicial proceedings. Also, the results of the scientific investigation clearly show that at the stage of the pre-trial investigation of criminal proceedings on premeditated murder committed in a state of strong commotion, the use of specialized knowledge, in particular of psychological and psychiatric profile, is important. In general, the use of specialist's medical knowledge in the investigation of crimes is a prerequisite for the proper qualification of the crime, the nomination and verification of reasonable investigative versions, improving the effectiveness of the tactics of investigative actions, establishing the specific causes and conditions that contributed to such

a crime, as well as individualization of the punishment. The use of specialized medical knowledge in the form of involvement of a psychology or psychiatry specialist to investigative actions with the participation of the suspect helps to establish and ensure the state of strong emotional commotion at the time of committing a criminal offense, promotes the proper legal qualification of criminal actions.

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*The Authors declare no conflict of interest.*

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