

Forms of use of special knowledge in criminal proceedings

Abstract: It is considered the forms of use of special knowledge in criminal proceedings described in juridical books.

Special attention is taken to the issues of specialist involving; it is studied its concept, status.

Suggestions on changing and supplementing of criminal procedure legislation are given.

Keywords: special knowledge; specialist; expertise; examination; hypnosis; polygraph; admissibility, adept person.

There is no single opinion on forms of special knowledge use in legal books whereas a right imagination of them gives a chance to use them in compliance with requirements of legislation, ensuring goals and tasks of criminal process.

V.M. Makhov justly points out that "...it is obvious essentially wide "spread" of opinions about these forms. There are authors stating that they are just two or three. There is no unity among numerous authors who believe that they are more.

These authors usually give quite full list of the forms of use of special knowledge, but without proper qualification of them. Stated happens due to insufficient attention to initial provisions of such qualifications. External frames all these forms limited with goal, which they are served: helping of an investigator in comprehensive, objective investigation on criminal case. Content of form use of special knowledge is determined with specific goals and ways rendering assistance to an investigator. Combination of named signs distinguishes the forms each other. Dependence on a sign, which is as basis for division, might be a few various

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qualifications forms of special knowledge use. On sign of procedural regulation all named forms might be divided into procedural and non-procedural” [14, p. 91].

The same opinion is kept A.R. Belkin, who separates procedural and non-procedural expert examinations [5, p. 76-77].

T.V. Sakhnova uses a notion “non-forensic expert examination” and notes that actually the courts use the results of non-forensic expert examinations in its practice, though their procedural status cannot be identified with conclusion of forensic expert [20, p. 51-52].

Y.G. Korukhov in his dissertational work notes that a problem of criminalistical research in administrative, civil and arbitrage processes appears a long, and these research are used law enforcement bodies. He notes that expert examination might be used at court proceedings and non-judicial one [21, p. 17-18].

In his dissertational work P.T. Skorchenko indicates in topicality of resolution of the problems using forensic-expert methods before initiation of criminal case [21, p. 17-18].

Y.P. Shumatov notes that “...legislation directly stipulates and regulates only two main form participation of persons with special knowledge in stage of investigation of criminal case. They are assignment and production of forensic expert examinations and expert’s participation in investigative actions. In addition, a lawmaker indicates, but not regulates controlling and referral activity of an expert in details, carrying out on investigator’s demand, in particular, assignment and production of inspections. At the same time, theory and practice use the special knowledge are to be much wider and varied” [23, p. 50].

Point of view of V.I. Shikanov is closer to us. He believes that there are eight known forms of special knowledge use in criminal proceeding: a) direct application of special knowledge by investigator, prosecutor, court, i.e. by participant of procedural activity, who are obliged to collect and evaluate judicial evidences; b) use of special knowledge of adept persons without involving them in investigative actions (consultations, receiving different notes on special matters); c) use of results of non-judicial investigations (departmental, administrative), and also results of

examinations separate objects, which carried out in course of indicated investigations or under other terms (ex. the results of post-mortem examination of a corpse); d) use of special knowledge of adept persons, assigned as forensic expert; e) use of special knowledge of interpreters and persons who familiarize with deaf and dumb signs; f) assignment of audits and inspections; g), production on instruction of investigator or court certain technical and other examinations [23, p. 25-26].

V.K. Lisichenko and V.V. Tsirkal note that classification of V.I. Shikanov mixes “procedural forms application of special knowledge with using the data received from non-procedural sources” [13, p. 11]. This connection, V.M. Makhov indicates that one cannot be agreed with statements about that “one of the most important procedural forms of application of special knowledge in preliminary investigation is direct using them by an investigator in order to detect, fix and study actual data on crime’s event and the persons, who committed of it. In procedural order to produce investigation actions in compliance with the law requirements about complete, comprehensive and objective examination case’s circumstances” [15, p. 11].

The problem of expert examination’s assignment before institution of criminal case directly linked with the above stated judgements.

The works lot scholars’ criminalists and specialists in procedural issues are devoted to research of criminal process issues. V.M. Savitsky, V.D. Arsenyev, V.I. Shikanov, I.N. Sorokotyagin might be related to the main opponents those, who are offering to permit expert examination production before initiation of criminal case. R.S. Belkin notes debating nature of an issue on possibility to assign a forensic expert examination at stage of criminal case initiation, indicating that the stage of institution of criminal case is not one-stage act, and it is a process, activity, duration of which is established by the law at three days (at exceptional cases up to ten days). This term is given to an authorized body in order to establish sufficient data, which indication at a crime’s signs [6, p. 168].

R.S. Belkin substantiated his opinion on possibility and necessity to involve the experts in certain case before initiation of criminal case, as “sometimes, it is

impossible to solve an issue about the grounds to institute criminal case without competent conclusion of adept person (just the conclusion, but not consultation, which is not reflected at criminal case's documents)" [6, p. 169].

In our view, R.S. Belkin is right saying the following idea: "Attempts to replace an expert examination with some "preliminary examination", in order to substantiate somehow a decision on initiation of criminal case, does not resolve a problem and may essentially complicate its decision, to be caused a direct violation of the law" [6, p. 221].

In opinion of A.F. Volynsky, the CCP unjustly marked an expert examination as a single organizational and legal form of use of special knowledge, the results of which have independent evidential significance. Along with expert examinations, expert-criminalistical bodies conduct, so named, preliminary examinations. According to A.F. Volynsky, proportion of expert examinations quantity and examinations is as 3 to 2, and in the most cases (82%) the examinations precede to expert examinations on the same criminal cases. He notes that this is one of the burning modern issues of the Russian court proceedings. In this connection, A.F. Volynsky is carefully considering the possible ways of the problem's decision, and he is inclining to legitimization of preliminary examinations [7, p. 111].

In 1987 E.R. Rossinskaya wrote about necessity to use preliminary examinations and attribution them to procedural form of special knowledge using [19, p. 15].

Some scientists relate to procedural forms the following: involving a specialist to participation at investigative actions and assignment, production of forensic expert examinations. According to them, non-procedural forms consist on: inspectional, audit, informational, preliminary examinational activity, and participation of well-acquainted persons at operational searching measures and investigative actions. They consider that non-procedural special knowledge have no evidential significance and are used as guiding information [25, p. 126].

They relate to the specialist the following adept persons, who are summoned by an investigator (by court) to participate at investigative (judicial) actions in purpose to assist to investigator (court) in detection and seizure of evidence. They note that a

specialist may conduct preliminary examination, but they do not indicate at which documents the specialist reflects the issues, course and results of examination [25, p. 130]. Thus, if specialist helps only to the subjects of investigative (judicial) actions and gives clarifications, which are included at procedural documentary form, then he is a participant of procedural activity. If “specialist” carries out preliminary examination, which is finalized by issue of non-procedural documentary form, then one should indicate exactly status of a person, as in this case, the status of a specialist is a procedural notion [25, p. 132].

Authors of encyclopedia provide the clarifications of a notion of well-acquainted person’s consultation. In their view, consultation provided by a versed person, on the base his special knowledge expresses his opinion on a matter about actions, which should be done in purpose of detection, fixation and seizure of evidence etc. Consultations are divided at verbal and written [25, p. 133]. Unfortunately, it is not given any clarifications at what kind is provided written consultation and status of a person, who signs the document. Since, written consultation is not a procedural form then a person, who signed of it, might not be a specialist in procedural sense as well-acquainted person does not status of procedural category [16, p. 28].

Under informational activity of versed person they understand providing an investigator (court) with information concerning to the results of data received in course expert’s activity. But, the authors do not provide clarifications at what kind this information is presented, in verbal or written. If certificate of well-acquainted person is formed in kind of documentary information then it is appeared an issue about person’s status, who signed this document.

Despite a specialist in procedural meaning of this word may give non-procedural information, but he is not obliged to sign a document with such information, where his status indicated as “specialist”, because in this case, he is a specialist in general meaning of the word, but a procedural one.

It seems that it is necessary to differentiate clearly the functions and status all well-acquainted persons at legislative level, and also the documents, which they

execute and sign, and more important, responsibility of these persons for providing obviously false documentary information.

R.S. Belkin offered that the experts of state expert institutions took an oath and gave recognizance on liability for providing obviously false expert conclusion [6, p. 222]. In our view, this would considerably make easy formulation a problem-solving task by a head of expert institution to an expert.

Dependence on type and goals of activity of inquiry officer or investigator are determined the forms of special knowledge using. To check received information about crime an officer of appropriate body may apply his own knowledge, and also knowledge of the specialists as consultations, but it is possible to deep and comprehensive application of special knowledge after initiation of criminal case and assignment of forensic expert examination [1, p. 21].

It seems that success of crimes' disclosure and investigation, as rule, is provided by combination of procedural and non-procedural forms of use of special knowledge of persons, who are possessed with special knowledge.

R.S. Belkin noted a significant role of well-acquainted persons in preparation of documents, which are a pretext to initiation of criminal case. He pointed out that use of knowledge of versed persons at stage of criminal case institution had not regulated by criminal procedure law, but detection of crime's traces under inspection of place of occurrence had begun at stage of initiation of criminal case under active participation of well-acquainted persons [6, p. 220].

V.IN Makhov draw attention to that involving of the specialists from other institutions and departments would be great help to prosecutor's office in supervision activity. But prosecutors should take into account the following circumstance. Distraction the highly qualified specialists from main work can create real conditions for violation of accidents' prevention, production's technology, and other considerable losses. One cannot ignore this situation [14, p. 75]. For these purposes he offers to involve the specialists of the expert institutions after increasing of the personals, expanding their duties to satisfy the specialist's needs of prosecutors [14, p. 76].

Developing the critical remarks concerning to the forms' listing of V.I. Shikanov, V.N. Makhov suggests to group more clearly in dependence on criminal procedure legislation regulation's level. An author distinguishes three groups of forms according to this sign.

The forms directly provided by the law he relates to the first group, believing that well-acquainted persons authorized with appropriate rights and obligations, whose assistance are used by investigators. In opinion of V.N. Makhov, here there is talking about using of the following forms of special knowledge: production of forensic expert examinations, involving of the specialists (including the teachers) to participation at investigative actions, participation of an interpreter in production on criminal case.

V.N. Makhov considers that "expert's activity is an examination of the objects submitted by investigator before an expert concerning to the matters, which have evidential significance for an investigator.

Content of specialist's activity is a participation at investigative actions in order to assist to an investigator in detection and seizure of the evidences" [14, p. 99].

V.N. Makhov believes that participation of a teacher in interrogation of minors' witnesses and accused is not an independent form of using knowledge of the well-acquainted persons, and variety of participation of the specialists at investigative actions. In fact, participation of a teacher at interrogation has a goal to ensure the rights and legal interests of minors. In addition, with permission of an investigator a teacher and specialist (participant of interrogation) have the right to ask questions to an interrogator; other specialists are not authorized with this right due to the CCP does not stipulate their participation at questioning [14, p. 100].

In opinion of V.N. Makhov, about that a teacher is a variety of specialist is testifying the following circumstance: the articles about judicial costs concerning to the persons, who should be summoned at court session, and another articles where experts, specialists, interpreters are not listed, the CCP say nothing about teacher [22, p. 210-211].

As for an interpreter, V.N. Makhov believes that interpreter like a specialist is an acquainted person, but he differs from specialist; he is an independent subject, who is involved to investigation. “Unlike a specialist an interpreter helps not only an investigator but those persons participating at a case, who have the right to use by services of interpreters. But, finally, this aspect of activity of interpreter helps an investigator to produce full-scale, thorough and objective investigations. In addition, an interpreter translates the investigative documents, in particular, an indictment. In case, when specialist participation is not mandatory at investigative action, an investigator may do some works himself; make a picture, draw a scheme. An investigator cannot replace an interpreter even if he knows languages that necessary for translation” [14, p. 37-38].

According to V.N. Makhov, “... using of knowledge of the experts at other forms is not regulated by criminal procedural legislation. But, according to the CCP, any actual data established by testimonies, records of investigative are the evidences on criminal case. Investigator has the right to reclaim the documents including those compiled by the experts. Sometimes, these documents have great significance for investigative body. Despite that preparation of the documents is carried out of frame of criminal procedural activity, but in established order (sometimes agreed with law enforcement bodies). Under observation of this order, the documents attached to a case (including those made up by experts), have evidential significance. This gives grounds to classify to procedural the forms of using the experts’ knowledge, the contents of which is preparation rules, instructions, and documents by the experts (or expert departments, inter-departments). The purpose of preparation of such documents is: a demand of an investigator or the rules, instructions are provided by necessity to attach them to criminal case (at stage of institution of criminal case – to the material of inspection) as the evidences since they contain information, which have relation to crime” [15, p. 101-102].

With considering of above stated, V.N. Makhov relates to the second group those forms, which are mentioned at the law, that is:

- a) revision, assigned by investigator demand;

- b) forensic medical examination;
- c) medical examination to give a conclusion about sending a person to forced treatment from alcoholism;
- d) on motivated written instruction of an investigator carrying out a forensic medical examination of a corpse and forensic medical examination of persons to determine a nature and seriousness of body injuries, age, sex and resolution other issues, which require knowledge at forensic medicine;
- e) special departmental investigations of accidents at work and traffic accidents that resulted in serious consequences;
- f) departmental expert examination of the commodities, on report of which the signs a crime have been detected (manufacturing of low quality products);
- g) special expert examination of commodities on assessment of losses' cost of transport means, which is resulted by traffic incident;
- h) the documents of other out-procedural actions, which made up with use of special knowledge having significance on case investigated. If they have data about committed crime then these documents should be sent law enforcement bodies to make a decision on criminal case institution. But, in case the documents were not submitted to an investigator timely, he has a right and is obliged to reclaim them in course investigation of criminal case [15, p. 102-104].

To the third group V.N. Makhov relates the forms associated with reclaiming by an investigator the documents, which contain informative and other data having relation to a case, prepared with using of experts' knowledge, but not replacing the reports of the experts and other documents, arranged at established order. Unlike the forms of the second group, the documents of the third group do not contain information about crime. They are mostly various certificates containing the responses to an investigator' questions and as rule, testifying or clarifying the provisions of departmental orders and instructions, analysis of which requires special knowledge. The documents of this group might be divided on those, which are especially made up on an investigator's request, and at those, which were made up earlier [15, p. 104-105].

In fact, use of special knowledge at criminal proceedings might be conditionally define as fixed at procedural law (procedural) and non-procedural one.

We believe this division conditional since, in our view, all forms of special knowledge using at criminal proceedings should be reflected in criminal procedure legislation that excludes their classification on this ground.

It should not be not stipulated at criminal proceedings forms of special knowledge using, since it is caused of their ambiguous interpretation and in actually is a gap at legislation.

Interim goal of use of special knowledge in criminal proceedings is a proving, and the final aim is a legal, full and fair resolution of criminal case.

Therefore, we correlate the forms of special knowledge using in criminal proceedings with processes of proving – with collection, inspection and evaluation of the evidences. In our point of view, special knowledge is used to collect evidences with production of various procedural actions, their fixation (saving), analysis, comparison and assessment on subject for relevance, admissibility, reliability and sufficiency.

Another classification of the forms of special knowledge using might be produced in dependence on resolved matters, for example to ensure the measures of procedural coercion, civil plea, compensation of expenses etc., and third – on stages of criminal proceedings: at stage of institution of criminal case, in course of pre-trial production, at stage of court examination etc.

In addition, the forms of use of special knowledge subdivided in direct and indirect, present and past, verbal and written, main and auxiliary, univocal and complex etc. ones.

It seems that this classification might be lasted to infinity, but not to have an essential significance in isolation one form from other one. Therefore, we offer to fix in the law a system of direct or indirect using of special knowledge under collection, examination and evaluation of the evidences. In criminalistical aspects, special knowledge might be used directly (own) or indirectly (other ones) under collection,

examination and assessment of criminalistically significant information that indicated by a subject of proving on case.

Certain complexity presents a matter of use of special knowledge come from requirements of the article 125.2.10 of the CCP, according to which it is inadmissible acceptance of information, documents and items as the evidences on criminal case, which are received with the ways contradicting to the modern scientific views [22, p. 151-152].

It is possible objections that above stated is not related to the forms, and to an essence of special knowledge, but this is not so. A way of receiving (using) of special knowledge is actually a structural element of the form, on base of which is produced a classification of the latter.

Not touching primitive (out-dated) views on an essence of being and conscious, just repeat that a concept “modern scientific views” is relative and subjective. Not so long, dactylography, which came from chiromancy, had been considered charlatanism. But the further development of science showed its actuality and objectivity.

In fact, actuality is a criterion of application of special knowledge, i.e. receiving of specific positive results upon achievement of specific goals (detection of crimes) and correspondence them to reality. Naturally, that obtaining of the results should be specified with certain terms (principles).

So, it is not secret that special law enforcement bodies of a lot countries use actively opportunities so named extrasensory individuals and achieve the goals put, transforming the work into various procedural forms – results of operational developments, work with secret apparatus etc.

Use of special abilities is not stipulated by the law, but it is possible that they are result of availability of special skills and knowledge, explanation of which has not given by science yet. There is nothing bad if being sat at police office, this man watching a photo says his vision about happened events, and an investigator rechecks information received by legal ways. Talking with extrasensory individuals is not prohibited by the law. In fact, it would be interesting if investigator presented the

conclusions of this individual as specialist's report, but nobody bans him to use them for searching criminalistically significant information.

Similar situation has created in criminal proceedings with hypnosis and polygraph.

Article 15 of the CCP of Azerbaijan Republic relates hypnosis to cruel, inhuman, degrading treatment. In our view, this assertion does not correspond to reality, and the CCP should be corrected at this part.

It is repeatedly undertaken attempts to solve a problem of equipment of investigative practice with newest methods of receiving full and true testimonies of the witnesses, victims, suspected and accused persons due to increasing of deficit of reliable information. Method of receiving of personal information after introduction a person in hypnosis state, which has been widely distributed in some countries, is related to the number of untraditional methods.

V.A. Obrazstov described a sample of hypnosis use by officers of FBI of the USA in 1997, in result of which a grave crime was detected. After that hypnosis has become popular in the USA, some departments of police created pilot programme of studying its officers to hypnosis' technique [12, p. 312-316].

Specialized subdivision of FBI, which investigates especially important cases, applies to hypnosis at those cases, when material is not sufficient to bring investigative versions. Hypnosis is considered as exclusive measure, for which is required the specialist with high qualification and complicated researching procedures. Typically, hypnosis is applied on such cases like banks' robbery (with application of armed force and big sizes of stolen), kidnapping, blackmail, forcible crimes, which are jurisdiction of the FBI, and also some cases on "white collar" criminality [17, p. 277].

In the USA hypnosis is used mainly under interrogation of the witnesses and victims who give voluntary consent to application of this procedure and interested in crime's investigation. As rule, hypnosis is not applied under interrogation of suspected and accused person, as according to Fifth and Fourteenth Amendments to the Constitution of USA, testimonies of indicated persons are not valid [17, p. 316].

On method developed by the FBI to questioning of interrogation with hypnosis using necessary to have the following: a) written consent of an interrogated person (which should be obtained after detailed instruction, where is explained the goals and tasks of the procedure, its harmless for health of interrogated person, warranties to observe confidentiality and use of information received in course of questioning); b) written permission of the Main Department of the FBI; c) written permission of Attorney General's Office (signed by deputy of Attorney of General on criminal cases) [17, p. 316].

There is no united point of view in juridical books on matter of possibility to hypnosis' application in criminal proceedings. Some authors categorically object to this, referencing to medical contraindication and inadmissibility to use the testimonies as evidences, which received under hypnosis [11, p. 76-79]. According to just remark of T.I. Akhmedov, little number of the authors joins to them, who have superficial idea about hypnosis and due to this believe that interrogated person can be forced to illegal violence under application of it. This category of hypnosis' opponents are not familiarize that hypnosis like special state of conscience is existed, researched by world psychology and medicine for several centuries and consequently cannot be subjected to hostility [3, p. 8-44].

Supporters of hypnosis' use under crime's investigation consider its application admissible and reasonable upon the following terms: full exemption of harm to interrogated person; deliberate voluntariness of application; use of information, which received by hypnosis, like orienting information to obtain evidence [12, p. 318].

It seems that discussion on possibility hypnosis application under crimes' investigation is rightly summarized by V.A. Obratsov. He writes: "Steadily and slowly hypnosis approaches to criminal process, gaining more brains of scholars-criminalists and entering in practical activity of creatively active officers of inquiry offices and preliminary investigative bodies.

Slowly because of everything new, progressive in domestic juridical area is moved with snail steps. This comes from old times. And surely move on the prowl.

Since a matter is thin, social environment is aggressive, explosive like mine field. Stand up at full size and jerk forward with inspired impulse, and end will come to you. At once you are becoming an object of damnations of the doctrinaires of criminal procedure law and other guardians of imaginary chastity of home Themis” [17, p. 278].

Abovementioned allows asserting that categorically ban of hypnosis is not way out. Research in this direction should be continued and in course of full absence of harm to an interrogated person, hypnosis should be included in arsenal of investigator like a form of special knowledge using.

The CCP of Azerbaijan Republic says nothing about ban of polygraph using in criminal proceedings, but practice excludes it from arsenal of law enforcement bodies. Anyway, the facts of polygraph using in the practice of law enforcement bodies of Azerbaijan are not appeared.

As it known, polygraph device that named also “lie detector” is a multi-purpose device, which designed for simultaneous recording of multiple physiological processes associated with occurrence of emotions: respiration, blood pressure, biological currents (brain, heart, skeletal and smooth muscle, etc.). These devices are widely applied at clinical medicine (especially in reanimation purposes), medico-biological and psychological studies, in applied psychophysiology, one of which is detection of lie.

Dozens years polygraph is applied in practice of combat to criminality in many countries of American continent, Europe and Asia. So, in USA, Canada, Israel, Hungary, Russia and other countries are collected data through this device, which allow making narrow circle of suspected persons in crime commission, detect a fact of committed crime, circumstances assisting of identification of guilty persons and creation of prerequisites for providing by him true testimonies, determination of inaccuracies, gaps, deception in testimonies, collection of additional information.

Research made by American Association of polygraph operators show that 87-96% cases received information are effectively used on criminal cases. Accumulated

experience of polygraph's application has led to formation of a system of principles of organization testing procedure with help of this device.

In addition, application of polygraph is not allowed in Austria and FRG, but decision of Federal Constitutional Court of the FRG from August 18, 1981 about the ban of polygraph application has been actively argued by scientists, who believe that prohibition of polygraph limits a right of accused to defence [4, p. 38].

An issue of polygraph application in former USSR has a complex history. At the beginning of 70th experimental works in area of polygraph application in criminal proceedings carried out in USSR only by some scientists and mostly in private nature. P.I. Gulyaev, I.E. Bykhovsky, G.G. Andreev and M.G. Lyubarsky by experimental way came to conclusion about fruitfulness of polygraph's ideas [2, p. 21-29; 8, p. 103-109].

But, experiments of P.I. Gulyaev, I.E. Bykhovsky and others were ignored in juridical book, and in procedural science and criminalistics prevailed point of view of N.N. Polyansky, which formulated in monograph "Evidences in foreign criminal process". Being addressed to separate samples from practice of polygraph application in USA, he substantiated his categorically negative conclusion with following arguments:

a) in a base of all attempts to create device for checking testimonies' truth lays obviously wrongful idea that disturbance of physiological reactions of questioned person from his individual norm "depends on a sense of fear tested him when he is asked questions, on which he cannot response truly, not being risked to be convicted", since physiological reactions depend on psychological constitution of various persons and changing (ex. from age) individuality of the same person;

b) to the factors, which influence onto psycho-physiological state of tested person, should relate world view that is not considered by polygraph supporters;

c) attempts to check testimonies truth with help of devices lead to undermine one of the cornerstones of democratic justice – to the principle of evidence's assessment on inner conviction as it is linked with authority of science, which conclude whether accused person says true or lies.

d) application of “detector of lie” violates principle of immediacy, introducing “intermediate chain where nothing can replace direct perception of a judge” [18, p. 68-76].

At the same time, R.S. Belkin allowed application of polygraph under interrogation if the following provisions are legally fixed:

a) application of polygraph is allowed only with voluntary consent of interrogated person; refusal from polygraph testing like and suggestion to be subjected the testing by interrogated person should not be fixed any procedural document; refusal from testing may not be interpreted in any form in a harm of interrogated person;

b) it is allowed for participation in questioning to involve a specialist-psychologist, who executes functions of an operator of polygraph, in frame of common specialist competence – a participant of investigative action.

c) Results of polygraph application have no evidential significance and are used by investigator like orienting information; only actual data containing in the testimonies of interrogated person are confessed as evidences. Material evidences of polygraph application (records) are not attached to a case [4, p. 55].

There are other variants of criminal procedure model of polygraph application under questioning suggested in legal books. So, V.I. Komissarov believes that in case making a decision (on his own initiative or on request of interrogated) about application of polygraph, an investigator should be:

- to invite a defender (if he is going to question of suspected or accused person), teacher, interpreter (upon questioning of a minor, deaf and others);

- to establish psychological contact with participants of interrogation;

- to make clarification them content, terms, order of production of investigative action and particularities of information use, which received during testing;

- to make sure that tested person understood of an investigator and to explain of interrogated his right to refuse from testing;

- to receive written consent to be tested on polygraph;

- to explain the rights and obligations all participants of investigative action and make a note in questioning record;

- to notify of operator about criminal responsibility for obviously false decoding of polygram and divulgence of investigation secret;

- to place on record the comments and statements of process' participants [8, p. 43-47].

Thus, we may make a conclusion that watching under polygraph using manifestation of physical or moral state might be for investigator: a) indicator of correctness his actions or vice versa, a signal to change direction of the actions or their tactics; b) mark to choose the ways establishing psychological contact to the person like prerequisite of successfulness this investigative action; c) material to study psychological and other particulars of process' participants.

Resuming stated, we may make a conclusion that currently has accumulated sufficient empirical material that allows using polygraph without prejudice to the rights of an individual in criminal proceedings as one of the forms application of special knowledge.

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