

L. V. Omelchuk,
*National University of the
State Tax Service of Ukraine,
candidate of juridical sciences
(Ph.D.), Associate Professor of
Department of criminal law,
process and criminalistics,*
A. V. Linnik,
*Associate Professor of
Department of criminal law,
process and criminalistics*

USE OF A POLYGRAPH IN CRIMINAL LEGAL PROCEEDINGS OF FOREIGN COUNTRIES: HISTORICAL AND LEGAL ASPECT

In article features of emergence and use of a polygraph in criminal trial of the countries of Africa, Asia and America are considered. The separate attention is paid to use of a polygraph in the course of disclosure and investigation of crimes in the countries of the European Union.

Keywords: *polygraph, foreign countries, countries of the European Union, disclosure and investigation of crimes.*

The polygraph is option of receiving and evaluating necessary information for investigation and disclosure of a crime from the interrogated person, by fixing of physiological reactions of the person to a question, had become the integral attribute in activity of law enforcement agencies of many countries. Dozens countries of Europe and America started to use a polygraph for prevention, investigation and disclosure of crimes. This is considered, that in the legal state essentially new means of obtaining information during interrogation of the person can be entered into practice only by decisions of legislature [4, p. 175].

First of all, it is rather broad application in many countries of North and Latin America, Europe and Asia of tests on a polygraph for objective establishment of the relation of the specific person to the facts known to it.

In Asia checks on a polygraph are applied in Lebanon, the United Arab Emirates, Hong Kong, Saudi Arabia, Jordan, Kuwait, Malaysia, Pakistan, Thailand, in Taiwan and Philippines. Experts of these countries received vocational training in the USA, Israel or Japan.

In the early 40th years the polygraph appears in China where the USA in 1943 trained some experts. After the end of civil war in China a polygraph specialists and devices were taken out to Taiwan.

After the end of civil war in China and formation of the People's Republic of China, the polygraph gets in this country to disgrace because of the negative attitude established under the influence of the USSR to this device. In the 50th years in the country campaign during which scientists subjected «lie detector» to sharp criticism was carried out.

After deterioration in the mid-sixties of the Soviet-Chinese relations the point of view on a polygraph changed, and the Chinese government bodies got in the USA a multichannel polygraph for use it for «lie detector». The leaders of country charged to study one of research institutes in Academy of Sciences in China applied opportunities of this acquisition, however the cultural revolution interrupted the begun researches.

In 1980 the leaders of country sent group of the Chinese experts to Japan for studying of practice of application of checks on a polygraph. Results of a trip led to a conclusion that «lie detectors» have under themselves a scientific basis, and the position of a complete negation of this method, taking place in the past, was incorrect.

In 1987 one of teachers of psychological faculty of Pedagogical university quite successfully applied laboratory equipment that at it was, for the purpose of «detection of lie» during the investigations made by the Shanghai management of public safety. These works drew attention of law enforcement agencies of the country, and in some educational institutions of the Ministry of public safety researches were begun and courses of lectures on «technology of a polygraph» are entered.

In 1990 the Ministry of public safety addressed to Department of police of the State of Michigan (USA) with a request for carrying out in the People's Republic of China of lectures on questions of use of a polygraph and assistance in receiving the American polygraphs. Along with these Chinese experts it was entrusted to develop own polygraph means through difficulties in acquisition of such devices in the USA. After a while the Institute of automatic equipment of Academy of Sciences of the People's Republic of China developed own polygraph allowing to carry out a psychophysiological method of «detection of lie». When the device has already created, the USA reported the Chinese experts that providing this technology communistic China – business of the future and is impossible now.

By efforts of specialists of the Ministry of public safety in May, 1991 in the People's Republic of China it was created a computer polygraph that allowed to introduce actively checks on a polygraph to the law-enforcement sphere. Now in China exist about 50, and in the near future the Chinese police plans to have at least on one specialist of polygraph on 3000 police stations. According to the American experts, by 1997 specialist of polygraph appeared at a third of the Chinese provinces. One of private Beijing firms lets out a computer polygraph of PG-1; development of a new computer polygraph of SPS-2000 [1].

In Japan the number of experts in the field of detection of lie takes the third place. The police of Japan adopted it more than forty years ago. At present Japan is the leading user lie detector use. Since 1959 results of researches with use of the lie detector are accepted as proofs in lower courts, and by the beginning of the 70th years they began to be represented and to the Supreme Court to the discretion of the judge. From the middle of the 70th years the police annually carries out to 10 thousand checks with polygraph use. According to experts from America, the National institute of police sciences in Tokyo conducts more researches in the field of lie detection, than any other laboratory in the world [3].

In Africa the polygraph appeared in the late seventies the XX century. The Republic of South Africa (RSA) became the first user of this device in 1978. Now checks on a polygraph in escalating volumes are applied both government bodies, and the private sector of the country, and Association of a polygraph of South Africa which unites professional specialists of polygraph, achieves adoption of law which would regulate training of specialists and method uses. Except the Republic of South Africa, specialists in checks on a polygraph are in Morocco, Egypt, Kenya and Nigeria [1].

In Turkey the polygraph began to be applied at investigation of crimes rather recently – since 1984. By the beginning of the 90th years was more than fifty operators of a polygraph. Now Turkey

is one of the leading countries of the world by quantity of the polygraphs having per capita. Training of specialists is conducted in America. The legal base generally repeats the similar documents used in the USA.

At the American operators of a polygraph employees of National guard of Saudi Arabia and police of Singapore had special training.

In 1995 introduction of this method in activity of Department of criminal investigations of Royal police of Malaysia is begun. [2]

Many countries of Europe for decades were negative to polygraph introduction in activity of the law enforcement agencies. However in the second half of the 90th years the tendency of distribution of a polygraph was outlined in the countries of the Western and Northern Europe which traditionally rejected possibility of its use. These countries are Switzerland, Germany, the Netherlands, Sweden and Norway. Courts in these countries at adjudgement can consider the results received by means of a polygraph.

In Germany the psychiatrist, Otto Lovenstein developed the tool, which registered movements of the sitting person and his breath for «lie detection». However at all prospects of its works they remained only laboratory experiments, did not receive a real exit in law-enforcement practice.

Despite presence of the American armies in post-war years in the Federal Republic of Germany, it did not cause polygraph introduction in activity of government bodies of this country. On the contrary, polygraph application in Germany was forbidden. The situation starts changing only in the mid-nineties. According to the American experts, in Germany now are five professional specialist of polygraph [1].

In the criminal procedural code of Austria use of a polygraph is also forbidden even if itself accused will demand test on a polygraph at investigation of a crime which is incriminated to it [2].

In Belgium polygraph tests in the first time were held in 1997. This year in the country was the serial murderer of children. Business was so scandalous and politicians and leaders of the government decided to apply new technologies, including polygraph tests to investigation. Experts from abroad were involved to work. On this case of polygraph the source was examined. Investigators used results of testing as indicative information for searching bodies of the killed children, and this search was very successful. Therefore the government of Belgium made the decision to use this method and on other criminal cases.

The next some years showed that in the polygraph tests in Belgium there is a future. However, using experts from Canada or South Africa was too expensive therefore, in 2001 two employees, one of gendarmerie and one of judicial police that had a long standing of detective work were selected. They completed a three-month course in the Canadian police college and mastered the Modified test of comparison of zones. In 2004 two more police officers had training in this institution. Now in Belgium there is no school training of specialist of polygraph.

In spite of the fact that use of a polygraph for Belgium rather recent practice, this procedure is regulated by the legislature. Polygraph is a specialized method of interrogation and can be used as an investigation element, but not as the proof.

Till 2001 in the country less than 100 examinations were conducted, these tests were held by experts of other countries. In 2001 two own specialists of polygraph since May until the end of the year conducted examination of 60 people. In 2002 192 persons were already tested. In 2003 – 251 persons, in 2004 three Belgian experts examined 277 people, in 2005 318 suspects, and in half a year in 2006 215 people are tested. More often the polygraph was used at investigation of the criminal cases made on the sexual soil and at murders. Polygraphs examinations after arsons were sometimes

conducted. Experts in Belgium use only the Modified test of comparison of zones. Tests are held on the device «Lafayette L-4000». For the Belgian experts it wasn't noted the serious problems connected with counteraction the polygraphs tests yet. Most likely, because, firstly, the polygraph didn't gain such wide circulation in the country as in other countries, secondly, the majority of the sites on the Internet on this subject is written in English whereas the main languages in Belgium is Flemish, French and German.

As it has already mentioned above, in Belgium law regulate polygraphs tests. According to this law testing is considered as an investigation element, is similar to other scientific researches, for example DNA. However results of this testing can't be the direct proof. The relation to recognition in Belgium a bit different, than in many other countries as it is considered that accused can refuse the recognition. Nevertheless, recognition can be used and are used in vessels of Belgium. On some very high-profile cases, such as murders which are considered by Special court with 12 jurors, the presiding judge can make the decision to show results of polygraph dough during a court session. Mass media also sometimes report about the polygraphs tests on some criminal cases.

Now in Belgium scientific researches on use questions the polygraph of devices when testing citizens aren't conducted. Though, for example, in the Netherlands the research project about use of results of polygraphs tests by courts is now carried out. Also in Belgium there is no professional association of polygraph. However the Belgian experts enter «the region 6» well organized Canadian association of polygraph of police. Together with Belgians experts of other countries of Europe enter «the region 6» [6, page 109-110].

According to the American experts, on two-three polygraphs is available in such countries of the European space as France, Great Britain, Italy and Spain, however in these countries the polygraph didn't find noticeable application.

In Poland the polygraph appeared in 1936, the Warsaw Institute of psychohygiene got it. And though researchers showed interest to polygraph application in investigative work (to what one of publications testifies, I was published in 1939), war began, removes polygraph introduction in Poland quarter of the century.

In post-war years the relation to checks on a polygraph in Poland, as well as in other socialist countries, was negative that, in particular, was reflected in the textbook «Criminalistics» published by professor Pavel Horoshevskom in 1958. According to the author, «in practice the lie detector is anything other, as devices which intended for deepening of the atmosphere of intimidation of the interrogated person». However soon the opinion of professor changes radically. That it as the scholar spent half a year to the USA was the cause of revision of his views, received in use «lie detector» and mastered techniques of its applied application. So, the psychophysiological method of “detection of lie” which was called in the Polish literature of those years as “the American Gestapo” in the early sixties got to Poland.

In the summer of 1963 under the resolution of regional prosecutor's office in Olsztyn P. Horoshevsky for the first time applied check on a polygraph at a legal investigation of murder. In a year the «voyevodsky» court in Lublin appealed to P. Horoshevsky to carry out an inspection of group accused on a polygraph. After the works of professor P. Horoshevsky stated above, the polygraph gradually started getting into activity of law enforcement agencies of Poland.

In 1968 the polygraph was applied on the case of espionage, excited by special military court in Bydgoszcz. An inspection was carried out in the presence of the prosecutor. In 1969 the Ministry of Internal Affairs of Poland bought a polygraph in the USA, and till 1976 on it checks of the persons passing on 223 cases were executed.

Now the Polish police totals not less than 15 polygraphs and actively applies checks on a polygraph in operational search and investigative work [1].

In Hungary applications of the polygraph for checking for disclosure of crimes began since 1978. Results of these checks in Hungary belong to information promoting disclosure of a crime and is not the proof of fault [2].

Also according to certain experts, certain opportunities of development of checks on a polygraph exist in such countries as Slovenia (at the disposal of 5 experts), Bulgaria – 6, Bosnia – 3, Hungary – 5 and Serbia – 5.

After collapse of the USSR Estonia became the first of the countries of Baltic, showed interest in a polygraph problem. The employee of law department of Tartusky university Peel Pruks in 1992 prepared the monograph «Criminal trial: scientific» detection of lie» – the first serious scientific work on the problem of a polygraph which left in Russian. In Estonia in the mid-nineties there were two professional polygraphs.

The beginning of introduction of use of a polygraph in Israel is the middle of the 50th years. Nearly a quarter of the century of check on the lie detector a polygraph were widely applied by regional and military police of the country. By the beginning of the 80th years there are first operators of a polygraph, offering the services in the sphere of business activity. In Israel results of tests on a polygraph aren't proofs, and form only the focusing base and means when carrying out operational search activity. Israel – the fourth country which trains operators of the lie detector, for the application of services of detection of lie, and for other countries [3].

The police which has a wide experience of application of this method in the activity is the largest user of a polygraph in the country. Still in the mid-seventies the Israeli police annually carried out more than one thousand checks by means of this device. In the Israeli police there is a special laboratory occupied with development and improvement of methodical and technical means of «detection of lie», and operating at Head department of police the Israeli school of a polygraph which trains specialists of polygraph. The Israeli intelligence services are users of a polygraph, the second for the importance, in the country apply it during investigations and when hiring for service. If to consider that appreciation which receives activity of the Israeli law enforcement authorities, including, and work of special divisions of investigation, counterintelligence, on fight with terrorist activity and to some other, not least such situation takes place thanks to the developed techniques of printing researches.

The third consumer of services in checks on a polygraph is the private sector of the country. In the country there is a lot of private polygraphs of agencies which work over all country, but they, as a rule, deal with investigations in the sphere of business. Active users of a polygraph are also insurance companies, which often suggest undergoing testing on a polygraph to the persons needing insurance compensations as a condition of the fast solution of a question.

Now in the country, by different estimates, from 60 to 110 polygraphs. Not less than a third which works in the sphere of private business, it is experts who went from public service. Considerable number of the Israeli polygraphs are members of the American association of a polygraph [1].

In India for the first time was shown interest in checks on «lie detector» in 1948 in connection with Mahatma Gandhi's murder. Having had six-week training in the USA, the officer of the Indian police used a polygraph for narrowing of a circle of people, suspected of participation in plot. After several cases of use during investigations of application of a polygraph, it was suspended up to the beginning of the 70th years.

After a twenty-year break in 1969 the government of India made the decision on creation of department of a polygraph at the Central criminalistics laboratory of the Central bureau of investigations. The department started functioning in 1974.

To the middle of the 80th years of office of a polygraph were already open in five states of the country, and during the period till 1987 in India about 3000 checks on a polygraph were executed in interests of law enforcement agencies, and never courts acted with prohibition of application of a polygraph by investigating authorities. Distribution of checks on a polygraph in the country, according to the Indian experts, restrains partially language reasons (as the population of India speaks 15 languages), and generally – inertness of thinking of potential users (lawyers, police officers.). In this regard the director of Bureau of police researches of the Ministry of Internal Affairs of India, speaking in 1985 at the 6th Vseindiysky criminalistics conference, I urged all police divisions of India to use more widely this scientific technology of interrogation [1]. In recent years in this country about 7000 inspections with use of a polygraph are carried out [3].

The polygraph is also using in the countries of America. So, in the USA except the Federal laws, each staff has own legislation, so, application of a polygraph is regulated differently. The legislation of the majority of states generally develops provisions of the Federal Law «About protection of workers against a polygraph» 1988 which action doesn't extend on public authorities. At the same time, in laws of some states possibility of application of a polygraph is directly mentioned at disclosure and investigation of crimes [5, p. 171].

The second place after the USA on the volume of the conducted researches is taken by Canada. The data received by means of a polygraph, in Canada aren't accepted as evidential base during judicial proceedings. The lie detector are actively used personnel checks in administrative bodies and on production. Since 1978 training of operators of a polygraph of the lie detector on special courses at the Canadian police college [3].

Development of checks on a polygraph in this country happened in the conditions of mutually exclusive influences of the USA and Great Britain. Being under strong influence of Great Britain in the field of a legal and legal procedure, Canada slowly entered checks on a polygraph into the law-enforcement sphere. Having started using this method in the 50th years, Canada trained experts in the American educational institutions up to 1978 when at the Canadian police college the courses of polygraphs created on a sample of Institute of a polygraph of the Ministry of Defence of the USA were formed. In the mid-nineties in Canada about 120 polygraphs were. According to specialists of Association of the American polygraphs, now this country is the second, after the USA, the user of a polygraph, applying it mainly during criminal investigations and, much more rare, to screening checks of shots (in public institutions, and in business). The Canadian police actively applies a polygraph in the work, in particular, when it is necessary to narrow a circle of suspects, to define, whether the crime was committed, to identify guilty and to gain recognition of fault, to establish exaggeration or, on the contrary, concealment of information and, at last, to collect additional information. The majority of checks becomes concerning suspects, however also witnesses, the victims and claimants put on trials.

The leading user of a polygraph in Latin America is El Salvador which uses this method more than thirty years, and to the middle of the 90th years disposed 28 experts. Except El Salvador, checks on a polygraph are applied in Mexico, Bolivia, Guatemala, Brazil, Venezuela, Argentina, Uruguay, Panama, Jamaica, Honduras and Puerto Rico.

In 1997 in Mexico City there took place the first annual conference of the Latin American association of polygraphs which united the professional polygraphs working in the countries of

this region. According to the director of agency on fight against drugs (USA) for creation of effective service on fight against drugs in such corrupted country as Mexico, it will be required from 10 to 20 years.

From four divisions existing in the country on fight against drugs three were corrupted and completely inefficient. Check on a polygraph of staff of Special department of prosecutor's office on crimes against health showed that from 2200 people only 560 subsequently were allowed to work. Again Special department of prosecutor's office of the crimes connected with drugs, entered obligatory checks on a polygraph of all arriving on service.

For service maintenance on fight against drugs soon it is planned to receive in the USA polygraphs and to prepare in the same place more than two tens polygraphs (a total cost of this program more than 200 000 dollars). Because of the threats which have arrived to polygraphs, the program is developed in the conditions of the increased privacy.

In this way, the analysis of a map of use during disclosure and investigation of crimes techniques of polygraphs researches testifies that at different stages of historical development to expediency of this using in the law-enforcement sphere, and in private life the leading countries of the world community came. Their experience shows that at existence of competent approach to a regulation in the criminal procedure legislation, use of polygraphs not only stop violate the fundamental rights and interests of the person and the citizen, but also increases efficiency of their protection against illegal restrictions and encroachments.

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