

Summary

The author has analyzed current issues of implementation of the properties of the system of punishments in the process of law enforcement. It is emphasized that the lack of a clear regulation of the procedure for replacing the main type of punishment with a milder type of it creates the problem of choosing a punishment from a plurality of milder types by which different theoretical approaches can be traced.

Keywords: *system of punishments, types of punishments, signs of the system of punishments, replacement of punishment, milder type of punishment, sentencing.*



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GENESIS AND PROSPECTS OF THE DEVELOPMENT OF IDEAS ABOUT THE NATURE OF CRIMINALISTICS SCIENCE IN UKRAINE

Степанюк Р., Лапта С. **ГЕНЕЗИС І ПЕРСПЕКТИВИ РОЗВИТКУ УЯВЛЕНЬ ПРО ПРИРОДУ НАУКИ КРИМІНАЛІСТИКИ В УКРАЇНІ.** У статті розглянуто історичний аспект розвитку наукових поглядів щодо природи науки криміналістики в Україні. Підкреслено, що уявлення про неї як про виключно правову науку, що залишилось у спадок з часів тоталітаризму, призвело до відставання природничо-технічного напрямку і відповідно негативно впливає на подальший розвиток криміналістичних досліджень. Запропоновано додатково вивчити можливість обґрунтування подвійної (юридичної та природничо-технічної) природи криміналістичної науки, у тому числі з урахуванням досвіду США та країн Європи.

Ключові слова: *юридична наука, криміналістика, природа криміналістики, криміналістична техніка, розслідування злочинів.*

Formulation of the problem. The development of Criminalistics as an applied legal science largely depends on the tasks that it faces in connection with the activities of law enforcement agencies in the field of crime prevention. However, so far, Soviet theory of Criminalistics has dominated the national science. Consequently it is increasingly lagging behind the needs of the practice, and is incapable of performing its main function - servicing the criminal process by developing effective means, techniques and methods necessary for use in pre-trial investigation and legal proceedings.

In the modern period, almost all post-Soviet states are characterized by a crisis of Criminalistics. It is noted that this science has not yet been restructured on the rules of competition and only works by inertia in the interests of the preliminary investigation, "does not see" a court investigation, operates inquisitorial stereotypes. In fact, it does not offer practical guides to lawyers, prosecutors, and judges to working with evidence in court [1]. Unfortunately, there are some grounds for such an assessment of the state of Criminalistics in Ukraine.

Analysis of publications on the research topic. The issue of developing ideas about the nature of Criminalistics science in modern Ukraine was researched only fragmentarily, in particular, in the works of M.V. Danshin, V.A.Zhuravel, V.V.Yusupov, V.Y. Shepitko and some other authors. However, there remain a lot of discussion aspects in this problem, which requires further scientific research. In particular, it seems necessary to carry out a critical analysis of the existing scientific principles in the field of Criminalistics. And one of the first is the

direction of determining its true nature, and, therefore, the priority tasks and the possibilities of improving both scientific research and practical activity.

Basic content. As far as is known, before the October 1917 state rebellion in the Russian Empire, Criminalistics was in its inception stage. During the training of lawyers they used translations of scientific works of foreign authors, as well as the experience of lecturers recruited at European universities. The formation of a new discipline for that time was characterized by some uncertainty about the future path and depended on the influence of relevant Western European approaches.

Since the end of the XIX century the approach of H. Gross was reflected in scientific publications. It was based on the recognition of the position of the author in relation to Criminalistics as independent science. It was noted that the subject of Criminalistics should be regarded both rules of use of evidence and the study of criminals and criminal activity in general [2, p. 51; 3, p. 115-117]. But also they were implanting a purely natural-technical approach to the understanding of the new field of knowledge, based on the positions of R-A Reiss in relation to the "scientific police", which S. Trehubov offered to call "criminal technology" [4, p. 9]. In other words, pre-revolutionary Russian criminalists just failed to formulate a unified approach to understanding the nature and tasks of a new science, and were at the crossroads. They did not decide which path to choose - purely natural-technical (the use of technology in police activities) or integrated (the use of technology, together with legal issues of investigative work).

Until the mid-30's of the last century in the USSR, the development of Criminalistics science had been carried out generally through the implanting of translations of practical guides of foreign authors, mostly German ones. This had been done in order to satisfy the basic needs of practice in the most essential forensic knowledge [5, p. 19]. So, the positive practice of using advanced foreign experience in forensic activity continued. At the same time, Criminalistics itself was often called "criminal technique" or "criminal procedural technique" [6, p. 73; 7, p. 6-7].

In the first fundamental Soviet work on Criminalistics, I.M. Yakimov clearly supported the name "Criminalistics" and exposed foreign achievements of this science, that were progressive for that time, drawing on the works of Western authors. He emphasized that Criminalistics is one of the sciences that develops separate branches of Criminal Law. It is of a very practical, applied nature and aims to provide scientific assistance to practice, for which it uses the methods of other sciences, mainly natural, medical and technical, and adapts them to the needs of criminal practice [8, p. 5]. As O.A. Levy recalls, later I.M. Yakimov was accused of being referring to bourgeois criminalists too often. However, not only did he ignore these reproaches, believing that the works of these authors were very helpful, but also invited students to come to his house and take the books of these authors. He said that no one would be able to find them; all had been frightened and destroyed them [9, p. XX].

Considering the backwardness of the Soviet state in the field of technology in general, and the forensic technology in particular, as well as the consequences of civil war and subsequent devastation in the country, it should be recognized that the scientists, who had got basic training and practical experience mainly in tsarist times, chose the perfectly correct path according to generally accepted approaches in leading European countries. However, this period did not last long, until about the beginning of the 30-ies of the last century. During mass political repressions in the USSR it has become deadly dangerous to study foreign experience.

One of the first who started to politicize Criminalistics was B.M. Shawer. In his well-known work leading scientists of that period I.M. Yakimov, H.J. Manns, V.I. Gromov and others were rigorously criticized as "unable or deliberately not willing to understand the reactionary nature of bourgeois Criminalistics, to discover the reactionary line of this Criminalistics and to oppose to it an own line in Soviet Criminalistics" [10, p. 57].

It is clear that in such circumstances it was already impossible to implement advanced foreign achievements in the practice of crime prevention and in the theory of Criminalistics. A political order was created for the construction of a new, "unique" Soviet Criminalistics. Accordingly, in the textbook of 1935, it has already been fundamentally opposed to "bourgeois" science [11, p. 6]. Criminalistics as an "investigation discipline" was started. It was pointed out that historically Criminalistics as a science appears only where it is inextricably bound up with the investigation, where it considers the investigation as the only process in which the role of the investigator is activated [10, p. 56]. Hereafter, the idea of an investigator as the main consumer of forensic recommendations was developed widely. It was emphasized that Soviet sci-

entists has begun to deviate from the influence of western criminalists, when, for understanding the subject of Criminalistics, along with the methods of using natural and technical sciences in order to combat crime, they adopted methods of their own investigation - its organization, planning and conduct [5, p. 25]. Also, in the textbooks of that period it was noted that bourgeois criminalists consider Criminalistics as nonlegal science and supposedly seek for ways to remove it from legal norms in order to facilitate and justify the use of forensic means and methods in the illegal practice of eavesdropping on telephone conversations, perusal of correspondence, etc. [12, p. 18-19].

It seems expedient to emphasize especially the harmfulness for the further development of science the path of gradual self-isolation of Soviet Criminalistics that was chosen in those days, and the beginning of systematic work aimed at opposing it to the Criminalistics of other civilized countries. It is clear that this was done in the light of state policy. Obviously, it is not possible to blame the scientists who, in the conditions of massive political repressions of the 1930s and later, were forced to act in this way in the rigid conditions of totalitarianism. However, we think that this error led to the crisis in Criminalistics.

O.M. Larin justly noted that the "cold war" had a negative impact on the development of Soviet Criminalistics. Then the information on the achievements of foreign Criminalistics was minimized and decorated with secrecy labels. The study of Western European and American works in this area was generally allowed only to "expose the reactionary essence of bourgeois Criminalistics". This prevented the development of use of foreign experience and, accordingly, the development of Criminalistics [13, p. 14].

The Soviet Criminal Procedure, as a vivid example of its inquisition model, was inherent in the crucial role of the preliminary investigation. Accordingly, the preconditions emerged in the subsequent representations of Criminalistics as a science exclusively on the investigation, the field of knowledge about the means, techniques and methods of investigation. It was not accidentally that the concept of H. Gross was taken, since he, at the time, especially noted that, unlike the testimony of witnesses, material evidence had to be collected and grouped to a hearing before a court, and it is quite correct to assert Criminalistics that the center of gravity the process must be transferred from the trial for the period of the preliminary investigation [14, p. XI-XII]. In the USSR, not only was the gathering of material evidence gradually transferred to the stage of the preliminary investigation, but also the whole process of proof, while the court was given a formal role, which in fact consisted of the approval (sometimes not approval) of the investigator's indictment by issuing the verdict. Therefore, it is not surprising that on this ground, Criminalistics, as a science intended to serve criminal justice, began to go through the development of recommendations primarily for the preliminary investigation. At the same time, by the mid-1950s, the dominant concept of Criminalistics as a natural science ceased to satisfy the Soviet criminalists, and it was entirely, in our opinion, logical attempts to substantiate its dual (legal and natural-technical) nature.

It is widely known that M.S. Strogovich consistently expressed the view that Criminalistics has two parts: to a greater extent, legal (criminal-procedural), as well as scientific and technical (in the aspect of the development of techniques of technical and natural sciences) [15, p. 55-56].

P.I. Tarasov-Rodionov in the heat of a decisive critique of the "destructive influence of bourgeois Criminalistics", whose "burping" he considered to be an understanding of it as an applied technical science, also expressed the right opinion that in Criminalistics there are two directions: a) the main thing - the disclosure and investigation of crimes (legal); b) subsidiary - methods of studying certain types of material evidence (based on the data processed and adapted for these purposes from natural sciences and engineering). The second direction is technical rather than legal, since it is not connected with the direct activity of the investigator, which is legal, but with the activity of expert specialist on issues requiring special knowledge [16, p. 153-154].

We think that the given point of view was somewhat hurriedly rejected by Soviet scholars, which laid the foundations for the further gradual decay of the natural-technical direction in Criminalistics. Scientists of that period indicated that supposedly it was proposed to divide Criminalistics to two different sciences, the Criminalistics itself (legal) and some other, scientific and technical discipline [17, p. 269]. However, neither M.S. Strogovich, nor P.I. Tarasov-Rodionov did not distinguish two different sciences. They ambiguously expressed the legal nature of Criminalistics. It was emphasized that the natural-technical direction is extremely closely connected with the legal and is of a subsidiary nature. That is, an attempt was made to

find a solution to the difficult problem of reflecting the heterogeneous nature of Criminalistics in its definition. But the Soviet ideas about the harmfulness of the idea of the double nature of Criminalistics have become rooted in the literature. For example, in modern textbooks it is also noted that the erroneous views of Criminalistics as a science of dual nature consists in the mechanical division of a unified science into legal and non-legal sections [18, p. 12]. Considering the process of formation of scientific knowledge of nature and the subject of Criminalistics, M.V. Danshin observes that the mechanical division of the unified science into two diverse camps, legal and non-legal, impedes the further development of Criminalistics and artificially narrows the scope of its practical recommendations [19, p. 82]. But, on the contrary, the negation of the natural and technical nature of Criminalistics technology significantly slows down its development and does not allow conducting full-fledged scientific research in this area.

Thus, the domination of the purely legal nature of Criminalistics in Soviet science led to the neglect of the direction of forensic technology, and the maintenance of the needs of contemporary inquisitorial proceedings led to focus on the creation of criminalistics recommendations only for the stage of pre-trial investigation, accordingly, ignoring the directions of "Criminalistics for court", "Criminalistics for defence" etc.

Already after the collapse of the Soviet Union, an outstanding scientist-criminalist R.S. Belkin urged to review the understanding of Criminalistics as solely legal science and tried to substantiate its synthetic character. In his view, the new ideas about it as a synthetic science do not mean a return to the concept of its dual nature, emphasizing that the dual, or rather the plural nature, have all the sections of Criminalistics, all its content, but not some special part of it [20, p. 42-43]. This point of view caused vigorous debate and ambiguous assessments. For example, V.Y. Shepitko emphasizes the appropriateness of refining Criminalistics as a science of integral or synthetic nature, indicating that it is a special science, the uprising of which is due to the implementation of the achievements of science and technology in the practice of crime prevention [21, p. 43-44]. At the same time V.A. Zhuravel supports the understanding of Criminalistics as a legal science, and notes that such an understanding does not prevent the further processes of integrating the achievements of other sciences and adapting them to the solution of its own problems [22, p. 54].

Modern criminalists of the RF are increasingly saying that post-Soviet Criminalistics is in crisis. It is emphasized that the fundamental cause of the crisis in Criminalistics is its synthetic nature, the absence of an internal systemic and integral picture of scientific knowledge, which constitute Criminalistics [23, p. 772].

In our opinion, the way out of a controversial situation may be just a return to the concept of the double nature of Criminalistics, namely the recognition of the natural and technical nature of its separate section - forensic technology. At the same time preventing the collapse of two sciences is in the plane of the allocation of such unifying features, which clearly indicate the harmfulness of the disparate development of forensic technology and criminalistics tactics, the feasibility of such a mutual penetration of its legal and non-legal provisions that make it expedient to the existence of a single allusion of knowledge. Relevant arguments are widely known and presented by scholars who, in our opinion, substantiated not so much the legal nature of Criminalistics as the unity of its two separate areas - legal and natural science.

This trend is also observed in the leading countries of the world, as there is a mutual influence of approaches to understanding the nature of Criminalistics from different legal families.

For instance, in the United States, where the most developed science of natural and technical nature, called Forensic Science, is increasingly used the term "Criminalistics". It is used in two meanings – broad, as a synonym of "Forensic Science" [24, p. 99] and in the narrow, as a designation of the component of Forensic Science, in particular those of its branches which are referred to the parts of criminalistics technology in Ukraine [25, p. 10]. At the same time, the legal issues surrounding the investigation in criminal proceedings are the subject of another area of knowledge, known as Criminal Investigations. US researchers point out that Criminal Investigations have not yet reached the status of a separate science and only prerequisites for this have been created [26, p. 5].

As for the relationship between Forensic Science and Criminal Investigations, it is noted that the first branch of knowledge is the application of natural and physical sciences to law, and the second – includes recommendations for criminal investigations, including the use of Forensic Science [27, p. 99-100]. That is, Criminal Investigations actually includes sections that can be correlated with the legal components of domestic Criminalistics (criminalistics tactics and

methods of investigation), but also contains certain provisions of forensic technology. In turn, Forensic Science, combining the natural-technical sections, also studies specific issues of tactics, for example, the specifics of conducting an investigative experiment [28, p. 654-664]. So, there is a close connection between these disciplines and the issue of type of their relationship remains open.

For Ukraine and other post-Soviet countries, the concept of Criminalistics in the Federal Republic of Germany is particularly useful as it was the German-speaking foundation, on which Soviet and then Ukrainian Criminalistics developed. Today's understanding of German Criminalistics is based on its classification as criminal law science, but non-legal, along with Criminology and Forensic Science (Forensic Psychology, Forensic Biology, Forensic Chemistry, Forensic Physics, Forensic Nuclear Science and other courts disciplines) [29]. It is important to note that German criminalists have recently called criminalistics technology as natural and technical forensics, since this particular name, in their opinion, more accurately reflects the essence of this section, because its subject is reduced not only to technology [30, p. 228]. Thus, there is a tendency for mutual penetration of approaches from the English-American and German understanding of Criminalistics, in particular recognition of its heterogeneity. This testifies to the need to further search for common and distinctive features of the legal and non-legal sections of Criminalistics science in order to establish its true nature and further improve the structure.

Conclusion. Summarizing the above, we note that the further development of Criminalistics in Ukraine should be in line with the tendencies inherent in the developed countries of Europe and the USA. The Soviet conception of Criminalistics as a legal science with exclusively legal nature led to a significant backwardness of the natural and technical direction of this field of knowledge. Therefore, it seems expedient to return to the recognition of its dual (legal and natural-technical) nature and on this basis to take effective measures to develop scientific research in the field of forensic technology. For this purpose, we consider it expedient to distinguish the scientific specialty "Criminalistics" not only in the field of legal sciences, but also to provide real opportunities for conducting scientific research on Criminalistics in the field of technical, chemical and biological sciences. It is necessary to catalyze scientific research on the study of best practices in developed countries in order to eliminate the lagging in the use of technical means and special knowledge, both during a pre-trial investigation and a trial, both prosecution and the defense, and not only in the criminal, but also in civil and other areas of legal proceedings.

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Summary

The article deals with the historical aspect of the development of scientific views on the nature of the science of Criminalistics in Ukraine. It is emphasized that the idea of it as the only legal science left in the heritage from the time of totalitarianism has led to a lagging natural and technical direction and consequently negatively influences the further development of research in the field of Criminalistics. It is proposed to further explore the possibility of substantiating the dual (legal and natural-technical) nature of forensic science, taking into account the experience of the United States and European countries.

Keywords: *legal science, Criminalistics, nature of Criminalistics, forensic technique, Investigation of crimes.*