

КРИМІНАЛЬНИЙ ПРОЦЕС, КРИМІНАЛІСТИКА

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METHODOLOGY OF FORENSIC PREVENTION OF CRIMES AGAINST THE FOUNDATIONS OF NATIONAL SECURITY

Abstract. In the provisions of the scientific article, the authors conduct a scientific study and formulate scientific theoretical provisions in the field of forensic science on the concept of the methodology of forensic prevention of crimes against the foundations of national security, its sources, techniques, special methods, forms and purposes of application of the methodology of forensic prevention of crimes against the foundations of national security. On this basis, the authors propose to fix in the theoretical provisions of the science of forensics such a definition as the methodology of forensic prevention of crimes against the foundations of national security, to form the subject matter of the methodology of forensic prevention of crimes against the foundations of national security, to determine in what aspects the methodology of forensic prevention of crimes against the foundations of national security is considered, its theoretical and practical significance, types, forms, levels, subjects and objects of the methodology of forensic prevention of crimes against the foundations of national security and to characterise the features of forensic prevention of crimes against the foundations of national security. The authors define that the subject of forensic prevention of crimes in general and against national security in particular is scientific provisions and practical recommendations on technical and forensic means, techniques and methods of detecting, recording and investigating criminogenic circumstances, tactical methods and means of their most effective detection and elimination, as well as prevention and suppression of crimes and forensic methods or systems of techniques for detecting and eliminating the causes and conditions of crime, as well as suppression and prevention of crime.

As a conclusion, the authors propose to adopt the Law of Ukraine “On Prevention of Criminal Offences”, which would contain general directions, forms, methods of preventive activities in relation to criminal offences, define the range of participants in these activities, their legal status, scope of activity, and criteria for assessing the effectiveness of work.

This law will become a procedurally enshrined “tools” for the prevention of crimes in general and crimes against the foundations of national security in particular.

Key words: *state, security, crime, treason, espionage, methodology, collaboration, forensics.*

Батюк О. В., Новикова О. О. Методика криміналістичної профілактики злочинів проти основ національної безпеки

Анотація. У положеннях наукової статті авторами проводиться наукове дослідження та формуються наукові теоретичні положення в галузі криміналістики що поняття методики криміналістичної профілактики злочинів проти основ національної безпеки, її джерел, прийомів, спеціальних методів, форм та цілей застосування методики криміналістичної профілактики злочинів, проти основ національної безпеки. На цій основі авторами пропонується закріпити в теоретичних положеннях науки криміналістики таке визначення, як методика криміналістичної профілактики злочинів проти основ національної безпеки, сформуванати предмет методики криміналістичної профілактики злочинів проти основ національної безпеки, визначити в яких аспектах розглядається методика криміналістичної профілактики злочинів проти основ національної безпеки її значення теоретичне та практичне, види, форми, рівні, суб'єктів та об'єкти методики криміналістичної профілактики злочинів проти основ національної безпеки, так-

тику здійснюваних заходів криміналістичної профілактики злочинів проти основ національної безпеки, та охарактеризувати особливості криміналістичного попередження злочинів проти основ національної безпеки. Автори визначають, що предметом криміналістичної профілактики злочинів загалом та проти національної безпеки зокрема, є наукові положення та практичні рекомендації про техніко-криміналістичні засоби, прийоми і методи виявлення, фіксації та дослідження криміногенних обставин, тактичні прийоми і засоби їх найбільш ефективного виявлення й усунення, а також запобігання і припинення злочинів та криміналістичні методи або системи прийомів виявлення та усунення причин і умов скоєння злочинів, а також припинення і попередження злочинів.

Як висновок автори пропонують прийняти Закон України «Про профілактику кримінальних правопорушень», який містив би загальні напрямки, форми, методи профілактичної діяльності щодо кримінальних правопорушень, визначав би коло учасників цієї діяльності, їхній правовий статус, сферу діяльності, критерії оцінки ефективності роботи. Цей закон стане процесуально закріпленим «інструментарієм» профілактики злочинів загалом та злочинів проти основ національної безпеки зокрема.

Ключові слова: держава, безпека, злочин, зрада, шпигунство, методика, колаборація, криміналістика.

The relevance of the research topic is caused by the fact that the methodology of investigation and prevention of certain types of crimes is a system of scientific provisions and techniques, methods and recommendations developed on their basis for organising and conducting investigation and prevention of crimes. It is worth noting that scholars identify the methodology of investigation of certain types of crimes as a synthesising section of forensics that combines the provisions of forensic techniques and forensic tactics in their specific application to the conditions and tasks of a particular type of crime.

Today, a number of scientific studies are being conducted in Ukraine, covering such important issues as: theory and practice of crime prevention; the importance of “background” phenomena in the genesis of crime; analysis of quantitative and qualitative crime indicators; improvement of the organisation and methodology of criminological research; study of subjective determinants of socially dangerous acts; generalisation of positive experience of crime prevention in foreign countries; forensic crime prevention, etc.

Well-known national criminologists are working fruitfully in this area: Y. Aleksandrov, I. Bogatyrev, V. Borisov, V. Holina, V. Glushkov, I. Danshin, O. Dzhuzha, A. Zakaliuk, O. Kostenko, O. Kolb, F. Lopushansky, P. Mykhailenko, M. Puzyrev, S. Tararuhin, V. Tuliakov, I. Turkevych, and others. It is also worth mentioning the scientists who have studied the problems of forensic crime prevention, namely: V. Boridko O., Goncharenko, I. Hora, V. Kolesnyk, V. Khodanovych and others.

When studying the issue of crime prevention, it is worth noting that the number of crimes committed in the first eight months of 2021 is approximately the same as in the first eight months of 2022 – 247401 crimes. The only difference is that the number of criminal proceedings against specific suspects in 2021 was much higher – 114919 criminal proceedings (Figure 1) [1, p. 30].

It should be emphasised that the statistical method used in criminology allows to study an array of crimes and, using the obtained indicators, to establish patterns and interdependencies of their development, to move from random and single to stable and systematic, to see the qualitative features of the phenomenon under study. Systemic analysis allows us to consider crime as a phenomenon characterised by certain links between its constituent elements, on the one hand, and, on the other hand, between crime and other social phenomena and processes that influence it [2, p.8]. The objectivity of statistical data, as defined by the science of criminology, is considered for a period of 5–10 years. That is why it is advisable to provide information on crimes committed in Ukraine for the period 2013 to August 2022 (Figure 2) [1, p. 30].

It is the above statistical data of committed crimes identified in Tables 2 and 3 that indicate the feasibility of studying the methodology of forensic prevention of crimes in general and crimes against the foundations of national security in particular.

The purpose of the article is to study the main provisions of the methodology of forensic prevention of crimes against the foundations of national security, and to develop on this basis

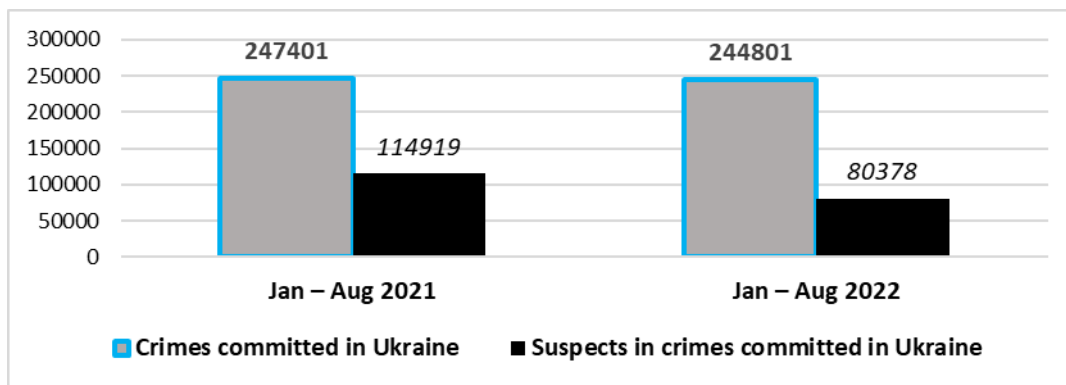


Fig. 1. Crimes committed in Ukraine during eight months of 2021 and 2022



Fig. 2. Crimes committed in Ukraine (January 2013 – August 2022)

theoretical provisions for the science of forensics regarding the concept, subject matter, significance, sources, techniques, special methods, forms and purposes of application of the methodology of forensic prevention of crimes against the foundations of national security.

Presentation of the main material. In our view, the methodology for preventing crimes against the foundations of national security is a system of theoretical provisions, techniques, methods and recommendations for organising the prevention of such crimes as treason, collaborative activity, sabotage, espionage, obstruction of the lawful activities of the Armed Forces of Ukraine and other military formations, aiding the aggressor State, actions aimed at violent change or overthrow of the constitutional order or seizure of state power, encroachment on the territorial integrity and inviolability of Ukraine, financing of actions committed for the purpose of violent change or overthrow of the constitutional order or seizure of state power, change of the boundaries of the territory or state border

of Ukraine, encroachment on the life of a state or public figure, unauthorised dissemination of information on the sending, movement of weapons, armaments and ammunition to Ukraine, movement, transportation or deployment of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed in conditions of martial law or state of emergency, which are based on the provisions of forensic techniques, investigative tactics and methods of investigating certain types of crimes, as well as the provisions of other natural and technical sciences.

We believe that the methodology of forensic prevention of crimes against the foundations of national security should be considered in two aspects.

Firstly, as a section of the forensic science, which contains a system of scientific provisions and comprehensive forensic recommendations for crime prevention.

Secondly, it is the process of prevention itself, as a specific activity of bodies and persons

authorised by law, which is carried out on the basis of the use of forensic techniques, investigative tactics and methods of investigation of certain types of crimes.

It is in the interconnection of these two areas – practical and theoretical – that the methodology of forensic prevention of this category of crimes fulfils its purpose, contributing to the development of scientific recommendations and their implementation in the practice of investigation.

In a narrow sense, forensic prevention of crimes against the foundations of national security should be understood as activities:

- firstly, the identification and elimination of the determinants of crimes against the foundations of national security with the help of forensic means;

- secondly, the detection of persons (collaborators, spies, saboteurs) before they commit crimes against the foundations of national security with the help of technical and forensic means and methods, and operational and investigative measures, namely covert inspection of publicly inaccessible places, housing or other property of persons, audio and video monitoring of persons, audio and video monitoring of places, surveillance of persons, collection of information from electronic communication networks, electronic information networks, arrest of correspondence, its inspection and seizure, the establishment of the location of an electronic means is carried out on the basis of a ruling of an investigating judge issued at the request of the head of the relevant operational unit or his deputy, agreed with the prosecutor. It should be noted that these measures are used exclusively to prevent a crime against the foundations of national security, prevent and suppress terrorist acts and other attacks by special services of foreign states and organisations, if it is impossible to obtain information in any other way.

In our opinion, the sources of formation of the methodology for forensic prevention of crimes against the foundations of national security are scientific data of forensics, regulatory and empirical provisions which determine the essence, forms, purposes of application of methodological recommendations which constitute individual preventive forensic methods.

Such sources should primarily include the provisions of the Criminal Code, the Code of Criminal Procedure, the Law of Ukraine On Operational and Investigative Activities, investigative practice, methodological, technical and forensic, tactical and forensic provisions and provisions of such sciences as natural sciences (physics, chemistry, biology, cybernetics and informatics), medical (forensic medicine, anatomy, physiology, psychiatry) and human sciences (psychology, logic, ethics, management, legal sciences) and other related fields of knowledge to forensic science.

Objectives of forensic prevention of crimes against the foundations of national security:

- limiting the impact of negative phenomena and processes interconnected with collaboration activities;

- elimination (neutralisation) of the determinants of criminal manifestations of obstruction of the lawful activity of the Armed Forces of Ukraine and other military forces, aiding the aggressor state, actions aimed at violent change or overthrow of the constitutional order or seizure of state power;

- elimination of criminogenic factors in the microenvironment of a person that form his/her anti-social position and motivation for criminal behaviour regarding unauthorised dissemination of information on the sending, movement of weapons, armaments and ammunition to Ukraine, movement, movement or deployment of the Armed Forces of Ukraine or other military forces formed in accordance with the laws of Ukraine;

- preventive influence on a person who, due to his/her lifestyle, is capable of financing actions committed with the aim of violent change or overthrow of the constitutional order or seizure of state power, change of the boundaries of the territory or state border of Ukraine.

Tasks of forensic prevention of crimes against the foundations of national security:

- 1) with the help of technical and forensic means and capabilities of digital forensics, to identify and analyse phenomena, processes, circumstances that are determinants of treason, sabotage, espionage;

- 2) using the methodological foundations of forensics, studying the factors that lead to the

formation of the criminal's personality and the implementation of criminal intentions to carry out collaborative activities;

3) through tactical, forensic and operational investigative measures, to establish the range of persons who can be expected to commit crimes against the foundations of national security;

4) using data from related fields of knowledge to eliminate or neutralise criminogenic factors at the individual level.

We believe that forensic prevention consists of general and specific techniques and methods. The set of forensic techniques and methods that are general in nature and can be used to prevent all crimes was defined as a general methodology of forensic prevention, which is an independent part of science along with forensic techniques, forensic (investigative) tactics and methods of investigation of certain types of crimes. Techniques and methods used to prevent only specific types of crimes are a separate method of forensic prevention. A component of criminalistics is the development of crime prevention issues, and based on the study of the situation and conditions in which various crimes are committed, the methods of their commission, and the generalisation of investigative and judicial practice, criminalistics develops preventive measures. These include:

1) technical means of crime prevention;

2) technical and tactical methods of detecting conditions conducive to the commission of crimes during the investigation and trial;

3) tactics of preventing intentions to commit or stop crimes.

Methods of determining the causes of a particular crime are part of the methodology for investigating certain types of crimes. The subject matter of forensic prevention also includes such measures as the organisation of property protection, a proper system of accounting for material assets and control over their expenditure, etc.

In our opinion, it is advisable to include technical and forensic means of protecting objects from criminal attacks in the subject of forensic prevention. These means can be used to obtain, accumulate and provide information about the tools and means used in the commission of crimes and persons prone to committing them.

The subject of forensic prevention also includes technical and forensic means, techniques and methods of detecting, recording and researching criminogenic circumstances; tactical methods and means of their most effective detection and elimination, as well as prevention and suppression of crimes; forensic methods or systems of techniques for detecting and eliminating the causes and conditions of committing crimes, as well as suppression and prevention of crimes.

That is why we determine that it is advisable to add the following definition to the theoretical provisions of the forensic science: the subject of forensic prevention of crimes in general and against national security in particular includes technical and forensic means, techniques and methods of detecting, recording and researching criminogenic circumstances, tactical methods and means of their most effective detection and elimination, as well as prevention and suppression of crimes and forensic methods or systems of methods for detecting and eliminating the causes and conditions of crime,

Klymenko N. notes that forensic prevention should include forensic means, techniques and methods based on the achievements of the forensic science, as well as developed by representatives of technical and natural sciences and used to identify, research and eliminate the causes and conditions that facilitate the commission of crimes and offences [3, p. 5].

We believe that the methodology of forensic prevention of crimes against the foundations of national security should include methods and techniques:

1) aimed at identifying the causes and conditions that contribute to the commission of crimes against the foundations of national security;

2) studying and researching the causes and conditions that contribute to the commission of crimes against the foundations of national security;

3) eliminating the causes and conditions that facilitate the commission of crimes against the foundations of national security;

4) control over the elimination of the causes and conditions for committing crimes against the foundations of national security.

In our opinion, it is the detection of the causes and conditions that facilitate the commission of crimes against the foundations of national secu-

rity that is part of a comprehensive, complete and objective investigation of the circumstances of the case.

The causes of a crime are understood to be those actual circumstances surrounding a person that have caused him or her to have interests and motives for committing a particular crime. The cause of a crime can be established only when a cause and effect relationship between these circumstances and the crime committed by a person under the influence of these circumstances is detected.

As a rule, when a crime is committed, there is a causative complex that includes not only socio-economic or political factors, but also socio-psychological ones. Socio-psychological determinants are dominant. They include elements of economic, political, legal, and everyday psychology of a person, since different persons in objectively equal material conditions choose different ways of behaving, both criminal and non-criminal. In view of this, an important role in determining the causes of a crime is played by the correct determination of the motivation for the act.

The conditions that facilitated the commission of crimes against the foundations of national security include the circumstances of reality, the presence of which made it possible to commit a crime or facilitated its commission.

We believe that the conditions that facilitated the commission of a crime against the foundations of national security may include, for example, the absence of security at the facility where the sabotage activity was committed, namely: subversive actions (arson, destruction, etc.) carried out by specially trained agents or groups in peacetime and wartime on the territory of a state or territory occupied by the enemy in order to weaken its economic and military power, as well as its morale.

Also, for example, the absence of proper educational control by parents or custodians in case of a crime committed by minors related to the unauthorised dissemination of information on the sending, movement of weapons, armaments and ammunition to Ukraine, the movement, relocation or deployment of the Armed Forces of Ukraine or other military forces formed in accordance with the laws of Ukraine through the most

common social networks (Facebook, Instagram, LinkedIn, Twitter, YouTube, TikTok) and messengers (Viber, WhatsApp, Telegram), etc.

Identification of the causes and conditions that contributed to the commission of crimes against the foundations of national security can be carried out not only during investigative actions (for example, during the interrogation of the accused when asked what prompted him to commit the crime; during the inspection of the scene – by establishing the existing security systems for the object of criminal encroachment, etc.) but also by analysing the information available in the case file.

It is during the conduct of public and covert investigative actions and operational search activities that the unity of forensic methods, tactics, techniques and equipment aimed at identifying the causes and conditions that contributed to the commission of a crime in general and against the foundations of national security in particular is observed.

Forensic techniques are of particular importance for the prevention of crimes committed against the foundations of national security. Elimination of the causes and conditions that contribute to the commission of crimes of this category is associated with the development of special protective scientific and technical means and methods of crime prevention.

The basis for the development of technical means of preventing crimes committed against the foundations of national security is the study and generalisation of investigative, operational and expert practice of identifying the causes and conditions that contributed to the commission of crimes in this area. In order to develop scientific and technical means of combating crimes in this category, typical methods of committing certain types of crimes are studied, namely: treason, collaboration, sabotage, espionage, obstruction of the lawful activities of the Armed Forces of Ukraine and other military forces, aiding the aggressor state, actions aimed at violent change or overthrow of the constitutional order or seizure of state power, encroachment on the territorial integrity and inviolability of Ukraine, financing of actions committed with the aim of forcible change or overthrow of the constitutional order or seizure of state power, change of the bound-

aries of the territory or state border of Ukraine, attempts on the life of a state or public figure, unauthorised dissemination of information on the sending, movement of weapons, armaments and ammunition to Ukraine, movement, relocation or deployment of the Armed Forces of Ukraine or other military forces formed in accordance with the laws of Ukraine, committed in a state of war or emergency.

Unlike other forensic means, technical means of forensic prevention are used before the commission of a criminal act. Their use is primarily preventive in nature. They prevent the commission of a crime or help to detect it.

In our opinion, the development of technical means of forensic prevention of crimes against the foundations of national security has the following main directions:

1) improving the protection of documents from forgery (development of forms of various types of documents; offering certain details of documents; application of special protective nets; application of printing features of document production; use of special protective ink or seal impressions, etc.) in the commission of treason, espionage, sabotage;

2) development of preventive devices and appliances (e.g., burglar alarm devices; electronic controllers and filters; night surveillance devices; video surveillance of important objects; devices of various designs and computer programmes) in the course of espionage, sabotage, collaboration, unauthorised dissemination of information on the direction, movement of weapons, armaments and ammunition to Ukraine, movement, relocation or deployment of the Armed Forces of Ukraine or other military forces formed in accordance with the laws of Ukraine, committed under martial law or a state of emergency).

It is worth noting that technical means of prevention are closely related to organisational preventive measures. This applies to the procedure for registering documents, the procedure for issuing permits, the existence of special rules for accounting for certain types of documents (for example, notarial documents when financing actions taken with the aim of violent change or overthrow of the constitutional order or seizure of state power, change of the boundaries of the territory or state border of Ukraine), etc.

In our opinion, the analysis of forensic practice shows that operational, forensic and special techniques are used in the process of preventing (and therefore prophylaxis), solving and investigating crimes.

That is why we believe that technical means and methods of forensic prevention of crimes against the foundations of national security should be classified into three groups according to the types of preventive tasks.

1. Technical means and methods used to detect facts that facilitate the commission or concealment of crimes against the foundations of national security. They may include:

a) equipment of a specialist, investigator's assistant, as well as technical sets of forensic and operational equipment;

b) means and methods of expert research;

c) techniques and methods of non-procedural use of forensic and operational equipment.

2. Technical means and methods of protecting various objects from sabotage and espionage attacks, for example, security alarms, means of preventing (or complicating) the commission of a crime (in particular, means of protecting documents, securities, money).

3. Technical means of supporting investigative public hearings and actions and operational measures (surveillance, escort, protection) of pre-trial investigation.

However, crime prevention, as one of the tasks of forensics, can hardly be successfully solved by using only some forensic means of prevention.

In our opinion, effective counteraction to crimes against the foundations of national security can be ensured only if the means and methods of forensic prevention are used in conjunction with other preventive measures.

One of the most important methods of scientific cognition in the forensic prevention of crimes in general and those committed against the foundations of national security is a survey. It is used to study the experience of preventive activities of investigators, prosecutors, experts and judges. This method is widely used in the development of general provisions of forensic prevention. The following methods of analysis are also used for this purpose:

– analysis and synthesis of the experience of police, prosecutors, courts, the State Bureau of Investigation, the Specialised Anti-Corruption Prosecutor's Office, the High Anti-Corruption Court of Ukraine, and legal entities of non-governmental organisations involved in the fight against crime;

– analysis of documents and statistical reports of the police, prosecutors, courts, the State Bureau of Investigation, the Specialised Anti-Corruption Prosecutor's Office, the High Anti-Corruption Court of Ukraine, and legal entities of NGOs.

The fundamental objection to the above system is that these methods do not belong to individual methods of forensics, but to general scientific methods. We believe that individual methods of science should be understood as those methods used in one branch of scientific knowledge.

In our opinion, it is advisable to divide special (separate) methods into purely forensic ones, among which are technical forensic and structural forensic methods, and special methods of other sciences, an exhaustive list of which is practically impossible to give (for example, the most common among them are sociological, statistical and some others).

O. Boridko proposes to add the method of economic analysis to the methods of forensic prevention. It is known that crime prevention as a set of state and public measures aimed at neutralising and removing the causes and conditions that contribute to the commission of crimes is a combination of socio-economic, cultural, educational, organisational, managerial and legal measures. This is fully applicable to economic analysis. Such analysis has become not only a method of management, but also a method of forensic prevention.

This method can be divided into three types: preliminary, current (operational) and subsequent. The preliminary method is an analysis of the economic indicators of an enterprise, institution, organisation; the current method is used in

the process of production activities of an enterprise, and the subsequent method is necessary to study the results and assess the economic activities of an enterprise, institution, organisation over a certain period of time [4, p. 48–51].

As a conclusion of the above, we note that, in our opinion, it is necessary: firstly, to supplement the theoretical provisions of the forensic science with the definition of the methodology of forensic prevention of crimes against the foundations of national security, the subject matter of the methodology of forensic prevention of crimes against the foundations of national security, in which aspects the methodology of forensic prevention of crimes against the foundations of national security is considered, its theoretical and practical significance, types, forms, levels, subjects and objects of the methodology of forensic prevention of crimes against the foundations of national security the tactics of forensic prevention of crimes against the foundations of national security, and to characterise the features of forensic prevention of crimes against the foundations of national security; Secondly, to adopt the Law of Ukraine "On Prevention of Criminal Offences", which should enshrine all appropriate measures for the prevention of crimes against the foundations of national security, which will facilitate the activities of prevention actors. This law will become a procedurally fixed "tools" for the prevention of crimes in general and crimes against the foundations of national security in particular; thirdly, forensic methods and methods of prevention are used not only by law enforcement agencies, but also by many other state bodies involved in the fight against crime. These tools are also used by the science of criminology. However, the development of means, techniques, methods and ways of prevention based on the achievements of the forensic science, as well as the development of recommendations for their most effective application, are, of course, the subject of forensic science, not criminology.

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