

Peculiarities of the Interpreter's Participation in Polygraph Examination: Organizational and Legal Aspects

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Abstract: *The article reveals the main organizational and legal aspects of involving the interpreter in conducting a polygraph examination. The example of criminal procedure legislation of Ukraine shows the main problems in regulating the involvement of the interpreter in conducting psychophysiological examinations using a polygraph, as it is the field of crime investigation that requires strict compliance with the requirements of procedural law. According to the results of the research, the factors that determine the expediency of involving the interpreter in the polygraph examination, which, in addition to the general rules, should also include cases where the subject of interest, although speaks the state language, but his / her language is foreign. It is noted that in the process of the polygraph examination conduct it is necessary to take into account such peculiarities of a person's knowledge of a foreign language as the use of dialectisms, slang and professional jargon, etc. From the standpoint of determined peculiarities of a polygraph examination conduct, the qualification requirements for the interpreter, which ensure the successful and effective conduct of such examination, are substantiated. The article reveals the main aspects of polygraph examinations conduct the interpreter should be acquainted with and the rules of behaviour of the interpreter in the examination process. The problems and directions of their decision are defined through the example of the criminal procedure legislation of Ukraine which are connected both with the general rules of involvement of the interpreter in forensic examination conduct influencing efficiency of carrying out psychophysiological examinations with the use of a polygraph, and peculiarities of legal regulation of the organization and carrying out this type of examination.*

Keywords: *Polygraph, interpreter, polygraph examiner, polygraph examination, psychophysiological examination.*

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1. Introduction

Formulation of the problem. The urgency of the problem stated in the article is stipulated by the fact that the involvement of the interpreter in the process of polygraph examinations involves compliance not only with the general requirements for this category of specialists, but also has its own peculiarities due to the specifics of these psychophysiological examinations.

The process of carrying out the activities by the subjects of the security and defence sector (especially in the performance of functional tasks by law enforcement agencies and special services) in connection with the verification of the information shared by a person, often makes provision for a need of polygraph examinations, including individuals who have no/insufficient skills in the state (Ukrainian) language. This determines the relevance of a detailed consideration of aspects of the language of a polygraph examination, taking into account the specifics of its conduct. After all, the misunderstanding of the essence of polygraph examiner's questions by the subject of examination makes it impossible to determine the fact of hiding certain information.

In addition, the subject of polygraph examination may have insufficient state language skills to understand all the questions of the polygraph examiner, or the polygraph examiner and the subject of interest may be fluent in another language (e. g. English, Polish, Russian, etc.), but the legislator obliges them to interact within the legal proceedings in the state language. From this there is a need to use in polygraph examination a language other than that defined by the legislator as the state language, and, accordingly, the possibility of involvement (or, conversely, decision on the inexpediency of involvement) of the interpreter in the examination. It should be noted that, the decision on the involvement of the interpreter in the activities of law enforcement and security institutions should also take into account the possibility/expediency of participation of third parties in the polygraph examination given the need to keep certain aspects of the case secret (secrecy of investigation) restricting the range of persons admitted to certain information (in order to prevent information leakage), etc.

The urgency of the issue of the language of the polygraph examination is added by the separation since 2015 within the forensic psychological examination of its type as a survey using a special technical tool i. e. a computer polygraph. This, in turn, led to an increase in the parties' appeals to this examination during the court proceedings. Thus, according to the information available in the Unified State Register of

Judgments of Courts of Ukraine, the number of decisions / judgements of courts the subject-matter of which was psychological examination using a polygraph, increased from 45 to 329 from 2015 until now. The latter necessitates legal regulation of the requirements on organization and conduct of this type of examination with the involvement of the interpreter.

Also, a significant increase in the number of cases of using the results of polygraph examinations in court, necessitates not only to determine the algorithm for the interpreter's involvement in the examination using a polygraph, but also to review the legal basis for his involvement.

2. General Background of Research

Analysis of recent research and publications. The study of the scientific literature on the issues of polygraph examination showed that, among a large array of publications on various aspects of the use of a polygraph, the subject-matter of the interpreter's involvement is represented only by single publications.

T. Luo revealed interpreter's involvement in translation as an intangible factor of combat power involving information and knowledge, and proposes a framework to map out how translation acts upon the internal mechanism of war (Luo, 2016). Some scientists considered English significance in self-education of the students and information technologies usage in translation during the foreign language professional training (Melnychuk et al., 2017a; Bloshchynskiy, 2017b). The communicative aspects of interpreting in the form of an interview were presented in the research of (Karpushyna et al., 2019). Detailed ESP morphological and semantic analyses of different lexical units were highlighted by (Lahodynskyi et al., 2018).

The research regarding flexible translation strategies applied in various tasks of military terms translation was performed by L. Sha, who conducted the analytical study and stated that as a consequence, translators needed to pay more attention on the relation of military terms to other items, such as sacrificial ceremony, hierarchy, social custom and so forth. (Sha, 2018). The problem of translation of military register from English to Polish was investigated by Joanna Pirus on the examples taken from the movies (Pirus, 2015).

Postmodern reality is different from other epoch which are characterized by fragmentation, game, probability. In postmodern society, information becomes a valuable commodity. Former values - power, money, exchange, production, began to be deconstructed. Everything turns into a game, the elite one - into a mass one, good and evil are replaced by

ambivalence, consumption is fetishized. Powerful universals are rejected, and the main violin begins to play virtual reality (Bloshchynskyi et al., 2021).

In the postmodern era, there are also some complex and contradictory processes of reassessment of the axiological reorientation of modern man. In this case, scientists S. Hanaba, O. Mysechko, I. Bloshchynskyi emphasized that solidarity of efforts is a common condition for world survival (Hanaba et al., 2020). Such scholars suggest that “the expansion of new and traditional media through the transformation of information into knowledge” is very important for obtaining knowledge with a help of various communication forms” (Melnychuk et al., 2019). A person in interaction with another culture acquires new experience, new skills, abilities (Hanaba et al., 2019).

In particular, the issues of the interpreter's involvement were covered in the articles by Burdick and Division (1973), Godby (1992), Aliiev (2015), Usykov (2015). William E. Wagner considered the peculiarities of the involvement of a sign language interpreter in conducting polygraph examinations on people with hearing impairments (Wagner, 1979). Such scholars as A. Soshnikov, Jaw. Komissarova, A. Pelenitsyn, V. Fedorenko formulated recommendations for the involvement of the interpreter in conducting polygraph examinations in the course of the investigation of crimes (Soshnikov et al., 2008). However, today the problems of legal regulation of the interpreter's participation in polygraph examination have remained out of the attention of scientists.

3. Methodology of Research

The objective of the article is to reveal and substantiate the peculiarities of the involvement and participation of the interpreter in polygraph examinations, as well as the basic requirements for legal regulation of such participation on the example of criminal procedure legislation of Ukraine, due to the use of polygraph in crime investigation and compliance not only with the examination methodology, clear wording of tests, but also corresponding to certain procedural formalities.

Therefore, the research consists of three parts based on the specified objective. The first part reveals the peculiarities of the interpreter's involvement in conducting polygraph examinations in relation to persons who do not have or have insufficient state language skills. The second part reveals the peculiarities of the interpreter's participation in the process of polygraph examinations. The third part reveals legal aspects of the

interpreter's activity in psychophysiological expert investigations with the use of a polygraph as a participant in the criminal process.

The basis of the **research methodology** is a praxeological approach, which consists in considering a polygraph examination as a professional activity of specialists, and therefore determining the consistent patterns and organizational aspects of involving the interpreter in this activity as a way to increase its efficiency and success. Also, a positivistic approach makes the basis for considering the legal aspects of involving the interpreter in conducting polygraph examinations in the investigation of crimes.

According to the **results of the research**, we considered the involvement of the interpreter for polygraph examinations conduct and distinguished the peculiarities of the organization of their carrying out both from the perspectives of a polygraph examiner and from the perspectives of an interpreter. Based on the distinguished peculiarities of the interpreter's participation in polygraph examinations and the analysis of the relevant norms of the criminal procedural law we identified the problems of legal regulation of this aspect and developed proposals for their solution.

The **significance of the research results** lies in the possibility of their use in the direct organization and conduct of such examinations, the development of standards and rules for the involvement of the interpreter in conducting polygraph examinations, improvement of the criminal procedure legislation.

4. Results of Research

I. Peculiarities of the interpreter's involvement in polygraph examinations in relation to persons who do not have or have insufficient state language skills.

In order to determine the specific problematic aspects of the interpreter's participation in polygraph examinations, it is necessary to determine the general algorithm of such examinations and the peculiarities of the examination procedure if the respondent has no/insufficient state language skills. In this context, there is no doubt that presenting incentives (asking questions) to the person is best done in a language that the person speaks fluently or at least uses it in everyday life (i. e. "thinks using the language"). This necessitates a polygraph examination (including psychological expert investigation using a polygraph) to be conducted in a foreign language, even if the subject speaks the state language at a certain level. In such a case, it is necessary to carry out interrogation from the very beginning of the examination.

Distinguishing the general algorithm of polygraph examinations will allow to determine the possibility/expediency and peculiarities of the interpreter's involvement in polygraph examinations, and, in particular, to answer questions about: expediency of the interpreter's involvement in the whole examination or its separate stages (if there is information about the respondent's understanding of the language of the polygraph examiner, a decision can be made not only on the possibility of conducting certain stages of the examination without the participation of the interpreter, but also on how to present incentives, make adjustments to the diagnostic procedure), methods of translation and communication between the polygraph examiner and the interpreter during the examination, requirements for the interpreter/polygraph examiner (including his specialization, level of dialect proficiency, the need for preliminary preparation, external, gender characteristics, etc.).

Therefore, the following stages are distinguished in the polygraph examination:

- preparatory,
- direct examination (contains the following elements: pre-test interrogation; testing/interrogation; inter-test interrogations; post-test interrogation),
- final (analysis of results).

Each of these stages has a specific goal, the achievement of which allows you to effectively implement the general concept of the examination. In particular, the preparatory stage provides for carrying out of: preliminary study of materials provided to the polygraph examiner (including determination of their objectivity, sources of receipt, etc.), and individual psychological characteristics of the respondent (in particular: education, field of activity, nationality, citizenship, his and his close relatives permanent place of residence, etc.); development (taking into account preliminary study) of questionnaires (tests) for a specific person. In addition, this stage defines the organizational aspects of the polygraph examination conduct (place, time, prior consent to the examination, the presence of third parties), a clear list of questions to be answered by the polygraph examiner based on the results of the examination.

The polygraph examination usually begins with the *study of materials* provided by the client of the examination, as well as other important facts/data about the person and circumstances of the case for the benefit of achieving the goal of the examination. At this stage, in our opinion, it is necessary to find out whether there is information on the level of the state language skills by the respondent (or another language that is fluent for the

polygraph examiner). First of all, it is necessary to take into account: general understanding of the language in which it is planned to conduct the interrogation using a polygraph; the level of language skills; the use of certain dialectisms, professionalisms (professional vocabulary), jargons, etc. by the respondent. At the same time, the polygraph examiner must know and understand the basis of the main peculiarities of the mentality and traditions of the people to which the respondent belongs. This will allow you to correctly and efficiently prepare the interrogation program, conduct pre-test, inter-test and post-test interrogations. This information can also be useful in analysing polygrams and preparing an appropriate conclusion.

And that is the preparatory stage which is already used taking into account the available information about the identity of the respondent to make a decision on the involvement of the interpreter.

Most polygraph examiners adhere to the position, which is conditioned by the specifics of a polygraph examination, that conducting the examination in a language convenient (native) for the respondent, without the involvement of the interpreter, is the best option because it does not involve third parties. However, it should be borne in mind that such an approach will be successful if the specialist who conducts the polygraph examination fluently speaks the language of the respondent or this language is native to the polygraph examiner. If the polygraph examiner has the language skills of the examined person, but the level of which is not high enough, it is more expedient to involve the interpreter in this examination.

It is worth noting that even if the interpreter is not involved in all stages of the polygraph examination, this period is extremely important for its further organization. After all, as noted in the publications abovementioned, this period should be used for the preparation (instruction) of the interpreter for the future procedure. In particular, it should include:

- informing about: functions of a polygraph, psychophysiological theory of a polygraph examination, rules of formulation of questions, definition of technical terminology which, probably, will be used; the location of the interpreter during the examination, as well as his/her rules of conduct in the testing process, paying special attention to what the interpreter is forbidden to do (distract himself and distract the respondent, communicate with the respondent or interfere in the dialogue between the polygraph examiner and the respondent, give redirections to the person being tested, exert psychological pressure on him/her);

- working out the signal system with the interpreter to ask or repeat questions, start and end the test; determination of the form of translation

(first person, literal translation) and, taking into account the qualification of the interpreter, the method of translation (consecutive, simultaneous), etc.

Involvement of the interpreter in the polygraph examination becomes possible and expedient provided the interpreter is acquainted with its specifics, clear planning and deliberate preparation and discussion of the test questions, as well as taking other measures aimed at preventing the negative impact of a third party involvement (by solving organizational and procedural issues) to the process of the polygraph examination.

An equally important part of involving the interpreter in the process of the polygraph examination is ascertainment his/her qualification. The polygraph examiner must find out whether a particular person meets the requirements for the interpreter and whether he/she is professionally able to translate within the polygraph examination. It is clear that the main requirement is the professionalism of the interpreter, i. e. he/she must not distort the information in the process of translating the questions of the polygraph examiner. However, there are other aspects of the interpreter's work that can negatively affect the results of the examination and the polygraph examiner's conclusion. In particular, adherence to the appropriate tone of communication (avoidance of intonation that will change the essence/importance of certain aspects, accusatory intonation, etc.), the pace of conversation (speaking), command of specific vocabulary, prevention of unauthorized informing the respondent about certain aspects of the questions which may reveal the "secret of the investigation" and facilitate to increase the number of people who are aware of the facts available to government officials, information acquisition source, etc. In addition, there may be additional requirements for the interpreter in some cases (in particular, the right to familiarize with certain materials (access to information with limited access), no conflict of interest, belonging to certain social groups, etc.).

Certain requirements for the competence of the interpreter are also determined by the examination procedure itself: asking questions or presenting incentives (photo/video/material); the ability to translate at sight in case of clarification of new circumstances in the examination process and the need for prompt adjustment of fact-finding questionnaires; the need to participate in the preparatory stage (including the explanation to the polygraph examiner of the peculiarities of the construction of grammatical forms in the language to be used in the examination, to better develop test questions, etc.) or in the final stage in preparing a conclusion on the results of the polygraph examination; other organizational aspects of conducting the examination using a polygraph.

II. Peculiarities of the polygraph examination with the participation of the interpreter.

The process of direct examination begins with a pre-test conversation. The polygraph examiner usually observes the speed and clarity of answers to individual questions/topics as far as during the conversation. This allows pre-determining the topic, which is avoided by the respondent and may later in the process of direct interrogation give false answers. In addition, the respondent's understanding of some words, or the content as a whole, will allow him/her to consider the answer to the polygraph examiner's questions more than usual allowing for the time to the interpreter to translate.

Therefore, the polygraph examiner's misunderstanding of the level of language skills by the examined person may complicate the pre-test conversation precisely because of the difficulty of identifying the real factors of changes in behaviour, expressions and nonverbal manifestations of the respondent.

At the same time, the polygraph examiner's misunderstanding of the moment when the respondent became aware of the question complicates the conduct of his/her direct testing.

It is the importance of clearly tracking the time limits of the reactions of the respondent to the laying of the stimulus that determines the peculiarities of the procedure of the polygraph examination with the involvement of the interpreter (this is the testing itself). Therefore, it is seen that the following rules should be followed when organizing and conducting the test itself with the involvement of the interpreter:

- the test questions are drawn up by the polygraph examiner and translated in advance. In this case, the interpreter in cooperation with the polygraph examiner must convey the semantic and psychological load of all types of questions included in the interrogation. In particular, when applying the method of control questions, it is necessary to maintain a balance of psycho-emotional load of control and test questions;

- the questions during the process of presenting stimuli (testing) are read by the interpreter without their prior announcement by the polygraph examiner.

Since the methodology of interrogations makes clear requirements for all groups of questions addressed to the respondent, the same requirements must be met as much as possible when translating. First of all, the questions should be:

- as short as possible;
- not have two or more verbs;
- not have an ambiguous interpretation.

In addition, it should be noted that relevant (significant, verification, key) questions can be asked in the forms of:

- direct question: “Did you take the money from the safe?”;
- detailed indirect question: “Do you know for sure who took the money from the safe?”;
- several questions: “Do you know for sure: who took the money from the safe?; when exactly did the theft happen?; how did the robber get the money out of the closed safe?; where is the stolen money now? etc.

These examples show that in order to translate the interrogation program drawn up by the polygraph examiner, i. e. the questions that will be asked during the interrogation, the interpreter must “feel” the nuances of both languages and convey them accurately. Let us note that it is necessary not only to literally translate the questions, but also to take into account the forms, clichés of the foreign language that are inherent in it. It should also be borne in mind that the form of the question and the use of “emotionally saturated” words play a significant role in conducting the polygraph examination.

Also, during the interrogation conduct, the polygraph examiner can use various stimuli to obtain psychophysiological reactions, non-verbal stimuli can be considered the most effective ones in working with foreigners. For example, relevant photographs and objects that make up a number of neutral distractors in tests of the method of detecting hidden information, so-called search tests.

The moment of awareness of the stimulus can be clearly recorded by the polygraph examiner in the case when the interpreter translates only the first main question and the polygraph examiner demonstrates stimuli in the form of photos / objects. In other words, the polygraph examiner “counts” the latent reaction time on all channels that graphically reflect changes in psychophysiological reactions from the moment when the respondent saw the stimulus.

It should be noted that the communication between the respondent and the polygraph examiner with the participation of the interpreter also has its own peculiarities. Thus, such a person may resort to certain explanations in the process of the polygraph examination. This should additionally be taken into account when preparing the interpreter for the examination procedure, as he must understand the rules and importance of accurate translation of information provided by the respondent, as well as the need to

keep to the communication procedure with the subject of interest in order to clarify certain data.

In the future, in the case of identifying additional facts that need to be verified in the process of the polygraph examination (including in the case of certain clarifications within the inter-test interrogations), there may be a need to draw up additional tests, adjust existing test questions. In this case, the requirements for the interpreter's professionalism, the organization of his/her cooperation with the polygraph examiner and the respondent are significantly increased. After all, additional negotiations between the polygraph examiner and the interpreter not only increase the duration of the examination, but also can give the respondent the opportunity to prepare for questions, while reducing the strength of reactions to them.

Thus, at first glance, it seems easier to limit the polygraph examination to incentives that do not require the involvement of third parties, minimizing communication solely in the form of material traces, than to take into account the additional influence of the interpreter on the examination procedure. However, such an organization of polygraph testing is not always possible due to the specifics of the stimuli / traces available to the polygraph examiner. In addition, the decision to involve the interpreter should be made taking into account the ratio of pros and cons of third party participation, given that the researchers of this problem (Burdick & Division, 1973; Soshnikov et al., 2008), in most cases, emphasize that the participation of the interpreter may complicate the polygraph examination due to: additional stress and anxiety that arise from the presence of the interpreter; difficulty in establishing psychological contact between the polygraph examiner and the subject of interest; additional influences on the respondent by the interpreter, which are difficult to be control by the polygraph examiner; the ability to avoid the answers by the subject of interest alleging as his/her reason that does not understand the essence of the question; increasing the duration of the procedure and reducing the level of confidentiality of the polygraph examination, etc.

In addition, the interpreter actually acts as a mediator between the polygraph examiner and the respondent, voicing not only the questions of the polygraph examiner, but also the words/explanations/requests/requirements of the subject of interest. In view of the above, it is important for the interpreter to observe "neutrality" in situations of confrontation or sympathy for one of the parties. In addition, the interpreter should refrain from discussions with the subject of interest, initiative explanations and informing about the details of the case, etc.

There are also certain peculiarities of interpretation in the process of polygraph examinations. In particular, B. Aliiev proposed the following "rules" of interpretation (Aliiev, 2015): the worst translation is better than no translation; the interpreter must always have a loud confident voice, a clear reaction; the utterance must always be ended; "hemmed" and "hununed" expressions are not allowed; the interpreter translates only what he/she is completely sure of; the logical connection of the previous information with the next one must be felt in the translation; the length of the translation and the original (almost) coincide; translation requires the use of only constant expressions, etc. In addition, he/she emphasizes such fundamental principles that determine the success of polygraph examination with the participation of the interpreter, as the accuracy and completeness of the translation.

Thus, involvement of the interpreter in the process of polygraph examinations should take into account certain psychological (mentality, national characteristics as well as traditions, moral and religious postulates, etc.), psychophysiological (body reactions to additional stressors, changes in response with a significant increase in examination duration, etc.) and linguistic aspects (specificity of construction of grammatical constructions in different languages, complexity of exact translation of separate words and phrases, use of dialectisms, etc.). The presence of such peculiarities necessitates the formulation of rules/principles of translation in the conditions of polygraph examinations.

Taking into account the analysis of publications and certain aspects of the organization of the polygraph examination procedure, in our opinion, in addition to the general principles of polygraph examiners' activity (in particular, scientific character, legality, confidentiality, humanism, personal responsibility, etc.), the following additional principles of the interpreter's participation in polygraph examinations can be distinguished:

- minimization of participation (the interpreter should be involved only in those stages of polygraph examinations and to the extent that makes it possible to implement the conception and solve the tasks/questions set before the polygraph examiner; the interpreter's participation should not affect the examination procedure (influence behaviour (distract) the respondent, cause significant changes in the organization of the process of communication between the polygraph examiner and the respondent, prevent the separation of real from false reactions of the respondent to the presentation of stimuli, etc.),

- combination of necessity, expediency and possibility of the involvement (when deciding on the need to involve the interpreter in a

polygraph examination, his/her formal (socio-demographic characteristics, access to classified information, etc.) and psychological characteristics must be taken into account (including the ability to translation in emotionally stressful/monotonous conditions, while maintaining a high pace of activity and balance (emotional and volitional stability); the ability not to draw too much attention to his/her own person, taciturnity, the ability to keep information),

- professionalism and knowledgeability (the interpreter must not only be competent in the state language and the language in which the polygraph examination is planned, but also have special terminology, have relevant work experience (within criminal, administrative proceedings, forensic examinations, etc.), know the peculiarities and principles of polygraph examinations conduct at a level sufficient to effectively ensure the procedure of the polygraph examination).

In our opinion, the involvement of the interpreter who has relevant competencies in polygraph examinations (knowledge of the basic principles, methods and techniques used in the process of such examination, his/her understanding of the examination situation, knowledgeability of the subject-matter which is checked with a polygraph, etc.) or being a polygraph examiner himself will also increase the effectiveness of the examination of a foreigner using a polygraph. However, such a procedure (conducting polygraph examinations in a foreign language in the course of proceedings) should be standardized, including the definition of the requirements for the person of the polygraph examiner, which determine his/her ability to carry out appropriate activities in a foreign language.

III. Regulation of the language issue of procedural actions in Ukrainian legislation: problems and prospects for improvement

If we analyse the areas of polygraph application in the security and defence sector, the issue of legal regulation of the involvement of the interpreter in the polygraph examination becomes most important in terms of psycho-physiological examinations conducted in connection with criminal investigations.

The ratio of the total number of polygraph examinations mentioned in court decisions to the number of corresponding forensic examinations using a polygraph that were conducted in criminal proceedings (see Table 1, Figure 1) suggests a growing trend both in the total number of polygraph examinations conducted by law enforcement agencies and the growth of the share of forensic examinations among them (from 68 to 83 % of the total

number of decisions/rulings of courts, the subject-matter of which was the psychological examination using a polygraph).

Table 1. Statistics of references to polygraph examinations in court decisions for 2015 - 2021

	Total number of references	Reference in criminal proceedings	Ratio of criminal proceedings to the total number of references (in %)
2015	45	31	68.9
2016	76	63	82.9
2017	66	45	68.2
2018	174	119	68.4
2019	201	162	80.6
2020	262	202	77.1
2021	329	241	73.3

Source: according to the data from the Unified State Register of Judgments of Courts of Ukraine

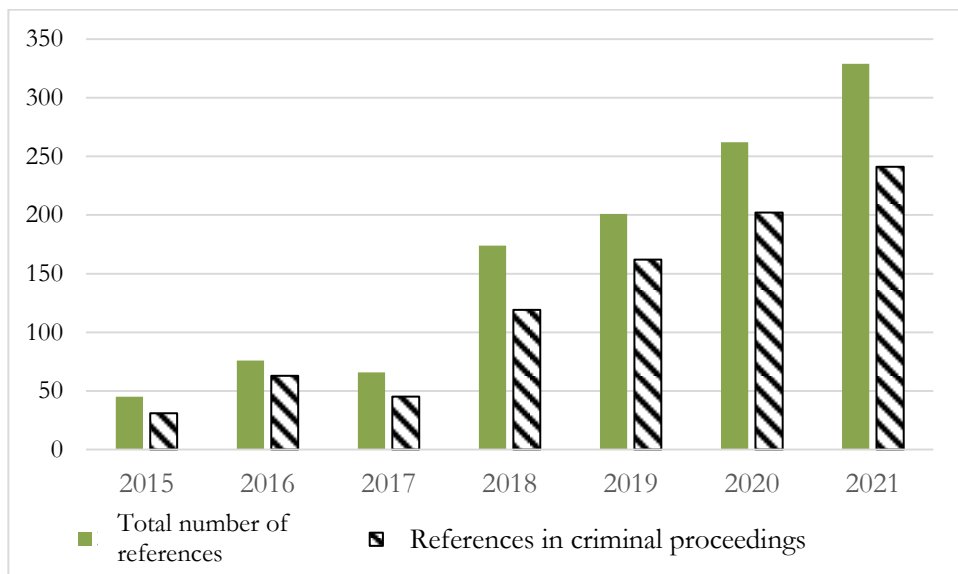


Figure 1. Diagram of the number of references to conducting psychological examinations using a polygraph in court decisions (from the moment of inclusion of such examinations to the types of forensic examinations in Ukraine)

This is primarily due to the requirements of Articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention for the Protection of Human Rights, 1950). In particular, Part 2 of Article 5 of the Convention provides that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him/her. Part 3 of Article 6 of this Convention defines among the rights of the accused in the commission of a criminal offense: to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The legal basis for the use of the state language is usually defined in the Constitution and the relevant special law at the level of an individual state. In particular, in Ukraine, Article 10 of the Basic Law stipulates that the state ensures the comprehensive development and functioning of the Ukrainian language in all spheres of public life throughout Ukraine. Paragraph 4 of Article 92 of the Constitution of Ukraine stipulates that the procedure for the use of languages is determined exclusively by the laws of Ukraine (Constitution of Ukraine, 1996).

In pursuance of this provision, the adopted Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as the State Language” (Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as the State Language”, 2019) defines, among other things, the basic principles of using the state language in the judiciary (Article 14) and in law enforcement agencies, intelligence agencies, state bodies of special purpose with law enforcement functions (Article 16). According to the mentioned norms, judicial proceedings, official activities, document circulation, communication with citizens of Ukraine are carried out in the state language. In addition, the use of a language other than the state language is provided for in the proceedings determined by the Procedural Codes of Ukraine and the Law of Ukraine “On the Judiciary and the Status of Judges” (Part 2 of Article 14).

Accordingly, Part 3 of Article 12 of the Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that courts use the state language in court proceedings and guarantee the right of citizens to use their native language or the language they speak in judicial proceedings (Law of Ukraine “On the Judiciary and the Status of Judges”, 2016).

With this in mind, it can be concluded that the norms of international regulatory legal acts, the Constitution of Ukraine, special laws of Ukraine, which determine the principles of functioning of languages and judicial proceedings determine the right of a person to use his/her native

language or language he/she can speak, and accordingly the duty of the state is to ensure acquaintance of such person, in case of his/her legal relations with the state connected with carrying out pre-judicial investigation or judicial process, with his/her procedural rights, duties, acts of individual action in native or understandable for this person language which can be different from the state language.

These norms of legislation are declarative in nature, and, in fact, determine the state policy in the field of language use. Accordingly, the specification and procedure for implementing these provisions in criminal proceedings are enshrined in the criminal procedure legislation.

At the same time, a detailed analysis of the relevant provisions of the Criminal Procedure Code of Ukraine (Criminal Procedure Code of Ukraine, 2013) indicates the presence of challenging issues related to ensuring the right of a person to use a native or understandable language other than the state language regarding both the involvement of an interpreter and the conduct of forensic examinations in general and specifically psychophysiological examinations using a polygraph.

In particular, in accordance with Paragraph 25 of Article 3 of the Criminal Procedure Code, an interpreter is designated as a participant in criminal proceedings, and Article 68 of this Code defines his/her legal status as a participant in criminal proceedings.

Involvement of an interpreter in the criminal proceeding is provided by a number of norms of the Criminal Procedure Code of Ukraine, namely: investigating judge, court, prosecutor, investigator provide participants in criminal proceedings who have no or insufficient state language skills, the right to testify, present a petition and file complaints, to speak in court in their native language or another language they speak, using the services of an interpreter if necessary in the manner prescribed by this Code (Part 3 of Article 29).

A suspect or an accused has the right: to use his/her native language, to receive copies of procedural documents in his/her native or another language he/she speaks, and if necessary to use the services of an interpreter at the expense of the state. (Paragraph 18 of Part 3 of Article 42).

A victim has the right during criminal proceedings: to give explanations, testimony in his/her native language or another language he/she is fluent in, to use the services of an interpreter free of charge at the expense of the state if he/she does not speak the state language or the language of the criminal proceedings (Paragraph 9 of Part 1 of Article 56).

A witness has the right to testify in his/her mother tongue or in another language he/she is fluent in and to use the assistance of an interpreter (Paragraph 4 of Part 1 of Article 66).

The comprehensive analysis of the above articles indicates the existence of gaps in the regulation of the interpreter's participation in criminal proceedings.

First, the general right of participants in criminal proceedings to use their mother tongue or a language they are fluent in, and consequently the grounds for involving an interpreter, is limited to their right to testify, present a petition and file complaints, to speak in court in their native language or another language they speak.

In this case, the suspect, the accused additionally has the right to receive copies of procedural documents in his/her native language or in another language he/she speaks.

At the same time, the rights of the witness and the victim are limited compared to the general right to use their native language, or a language they are fluent in only until testimony (explanations) are given.

It is quite logical that only in these cases should the right to use the services of an interpreter be granted.

In addition, the above rules do not take into account the rights of participants in criminal proceedings with disabilities i. e. hearing and speech impairments. Considering that, such persons may speak the state language, but in communication with them, there is a need to involve a person who speaks sign language (sign language interpreter) who, besides the point, falls under the status of the interpreter in accordance with Article 68 of the Criminal Procedure Code.

Also, as noted by S. Illiuk: the criminal procedure legislation, in contrast to civil, commercial and administrative proceedings, does not determine qualification requirements for the interpreter. In particular, there is no algorithm for checking the level of knowledge of the interpreter's language skills to assess his/her possibility of proper translation when considering the essence of the case (Illiuk, 2020).

The next issue that needs to be regulated is the status of forensic examination in criminal proceedings as such. The fact is that Chapter 20 of "Investigative (Search) Actions" of the Criminal Procedure Code of Ukraine does not explicitly define forensic examination as an investigative action in contrast to interrogation, presentation of a person, things, corpse for identification, entry into housing or other estate, search, inspection, examination of a corpse, investigative experiment, certification of a person which are directly defined by the legislator as Investigative actions. However, the same section of "Investigative Actions" contains rules that determine: the grounds for examination (Article 242), the procedure for involving an expert

(Article 243), Consideration of a request for examination by the investigating judge (Article 244), obtaining samples for examination (Article 245).

This stipulates controversy among scientists and practitioners as to whether conducting a forensic examination is an investigative action. Without going into the description of the available views, the consideration of which is not the subject of this article, we only note that we hold the view that forensic examination is an investigative action. This reasoning is based on the following provisions:

According to Article 1 of the Law of Ukraine "On Forensic Examination" it is the examination based on special knowledge in the field of science, technology, art, occupation, etc. of objects, phenomena and processes in order to provide findings on issues that are or will be subject to court trial (Law of Ukraine "On Forensic Examination", 1994).

According to Part 2 of Article 84 of the Code of Criminal Procedure, expert findings are procedural sources of evidence. Part 1 of Article 101 normatively enshrines the concept of "expert finding" i. e. a detailed description of the examination conducted by the expert and the findings drawn from them, substantiated answers to questions posed by the person who involved the expert or by the investigating judge or court that commissioned the expert examination.

In turn, according to Part 1 of Article 223, investigative (search) actions are actions aimed at obtaining (collecting) evidence or verification of already obtained evidence in a particular criminal proceeding.

Therefore, we fully share the opinion that the involvement of an expert and forensic examination is an investigative action, which is a special, provided for in the legislation form of obtaining new knowledge relevant to criminal proceedings, through examination by persons with special knowledge in the field of science, technology, arts and occupation. The essence of the examination (expert examination) is the conduct of an independent examination by an experienced person (expert) at the request of a party to criminal proceedings or on behalf of the investigating judge or court on the basis of his/her special knowledge which is necessary to clarify the circumstances relevant to criminal proceedings and are embodied in the expert's findings" (Hroshevyi et al., 2013).

Regarding the subject-matter of the article, determining the status of forensic examination in criminal proceedings is considered important in view of determining the status of the interpreter involved in the relevant type of forensic examination using a polygraph, namely - whether the interpreter involved only in polygraph expert examination is a participant in criminal proceedings and whether the rights, duties and responsibilities of

the interpreter as defined in Article 68 of the Criminal Procedure Code of Ukraine apply to him? In other words, does the interpreter involved in the psychophysiological examination with the use of a polygraph have a legal status in accordance with the criminal procedure legislation?

In our opinion, such a person should be subject to the requirements of the above-mentioned norm of the Criminal Procedure Code of Ukraine, first of all, due to the fact that he/she becomes aware of information directly related to the criminal proceedings when involved in such an examination.

It should also be noted that these problems violate such principles of criminal procedure as legality and dispositivity, create legal uncertainty and negatively affect the uniform application of the Criminal Procedure Code of Ukraine.

In addition to the listed problematic issues of legal regulation of the interpreter's involvement during the expert examination, which also negatively affect the organization of examination using a polygraph in criminal proceedings, we should also pay attention to the problems of legal regulation of the interpreter's involvement in the expert examination using a polygraph.

Thus, in accordance with Part 3 of Article 29 of the Criminal Procedure Code of Ukraine, the investigating judge, court, prosecutor, investigator provide participants in criminal proceedings who have no or insufficient state language skills, the right to testify, present a petition and file complaints, to speak in court in their native language or another language they speak using the services of an interpreter if necessary. The detailed analysis of this and other related rules of criminal procedure legislation and its literal understanding allow us to conclude that there are a number of problems that may adversely affect the organization of the polygraph examination, namely:

- the right to use the native language (other than the state language) does not cover the language of the examination;
- the use of a native language (other than the state language) is provided only in the case of lack or insufficient state language skills.

In addition, both the general requirements for the interpreter's qualification and the specific ones, due to the peculiarities of the polygraph examination, need to be regulated.

Thus, the legal regulation of the interpreter's involvement to participate in the psychophysiological examination using a polygraph needs to be improved in terms of adjustment:

- the status of forensic examination as an investigative action;

- the possibility, in the case of the specifics of the expert examination, to use the native language by the participants of the process, even if they speak the state language. In the same context, there is a need to regulate the possibility of conducting a polygraph examination without the involvement of the interpreter, if the polygraph expert is fluent in the same language as the subject of interest. Insofar as the direct communication of the polygraph examiner with the subject of interest provides a more accurate fixation of psychophysiological reactions and the ability to reduce the impact of adverse factors (including the presence of third parties) and stimuli on them, and as a result - a greater degree of the appropriate expert examination reliability;
- the rights of persons with hearing and speech impairments to use the services of a sign language interpreter;
- determining the general professional requirements for the interpreter as a participant in criminal proceedings.

Legal confirmation is also needed in terms of the requirements for the procedure of involving the interpreter in a psychophysiological forensic examination using a polygraph, including special requirements for his / her qualification, in particular, perfect command of a foreign language, knowledgeability to accurately reflect the content of questions and answers, taking into account the language peculiarities and its individual dialects, knowledgeability and understanding the specifics of a polygraph examination, compliance with the rules of conduct during its execution, as well as the rules of polygraph examination with the participation of the interpreter. These issues, in our opinion, should be resolved at the level of the standard of the relevant expert examination.

5. Conclusions

The growing relevance and demand for polygraph examinations in various spheres of public life leads to a wide discussion in the communities of the reliability of the results obtained in the process of their implementation, including the cases of possible modifications of examination procedures. One such specific situation of a polygraph examination is when the subject of interest is a foreigner or does not have sufficient state language skills well due to various circumstances. This necessitates the solution of additional questions by a polygraph specialist regarding the organization and conduct of such examination.

Although most polygraph examiners are currently wary of the interpreter's participation in this psychophysiological examination of a person, this method is considered possible provided that certain rules and

procedures are followed. In addition, the involvement of the interpreter in conducting polygraph examination has its own peculiarities in comparison with the participation of such specialists in the implementation of other activities within the activities of specialists in the security and defence sector. In particular, it is important to adhere to the principles of:

- minimization of participation (the interpreter is involved in exceptional situations when it is impossible to carry out the examination without professional linguistic assistance);
- combination of necessity, expediency and possibility of the involvement (taking into account the socio-demographic and psychological characteristics of the interpreter, the specifics of the established restrictions on the given situation of the examination, etc.);
- professionalism and knowledgeability (since the interpreter's qualification has a decisive influence upon the overall performance of the polygraph examination, special training of this specialist is required).

The qualification of the interpreter, who is involved in the polygraph examination, presupposes the development of communicative characteristics, perfect mastery of language technologies, ability to control his/her own emotional manifestations, awareness of the specifics of a polygraph examination conduct. The effectiveness of such cooperation is also added by the implementation of additional procedures before the examination, namely: early planning and instruction of the interpreter, his/her training in basic aspects of psychophysiology of responding to emotionally significant stimuli, testing the signal system.

A clear regulation of polygraph examinations is of particular importance within the activities in the security and defence sector, as a subject of public law, who is guided in his /her activities by the principles of the rule of law, legality, respect for human rights and freedoms, etc.

Taking into account the above, the considered problems of legal and regulatory framework of the interpreter's participation in conducting psychophysiological forensic examinations with the use of a polygraph in criminal proceedings and the proposed directions of their solution can be conditionally divided into the following groups:

- principles of using the state language and other languages in criminal proceedings;
- the status of forensic examinations in criminal proceedings;
- requirements for the interpreter as a participant in criminal proceedings, and special ones, due to the distinguishing features of a polygraph examination;

- peculiarities of the procedure of the interpreter's involvement and his/her participation in carrying out polygraph examination.

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