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PROBLEMS OF CRIMINALISTIC SUPPORT OF THE PRACTICE OF THE INTERNATIONAL CRIMINAL COURT IN UKRAINE

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Abstract. *The current tasks of criminalistics in the light of the implementation of the Rome Statute of the International Criminal Court in the domestic legislation of Ukraine in today's realities, current problems of criminalistic support of this body to investigate and prosecute war crimes and international crimes, identify and outline promising areas of research. It is noted that today the tendency of strengthening the practical orientation of criminalistic developments, innovative products, their pragmatic orientation to solve important practical problems of criminalistic support of the International Criminal Court in Ukraine acquires special significance. It is substantiated that future research envisages taking into account in criminalistics three areas of such activities – technical-criminalistical, tactical-criminalistical and methodological-criminalistical in relation to the investigation of international and war crimes. Perspective directions of criminalistical researches in this sphere of knowledge are considered.*

Formulation of the problem. In modern realities, the effectiveness and efficiency of reforming the judicial and law enforcement system in Ukraine is possible only with international standards in mind. Among such standards, the case law of the European Court of Human Rights and other judicial bodies, including the activities of the International Criminal Court, is of particular importance. This is especially relevant due to the annexation of the Autonomous Republic of Crimea and the existing aggression of the Russian Federation in eastern Ukraine in Donetsk and Luhansk regions.

It is seen that in such circumstances the importance of the implementation of the Rome Statute of the International Criminal Court in domestic law and the direct activities of this body for Ukraine today is extremely important. At the same time, it is necessary to take into account some features of such implementation, given the existing experience of some states and the practice of applying the provisions of the Rome Statute of the International Criminal Court in national law [1].

Presenting main material. First of all, it should be noted that according to international legal doctrine, states have no direct obligations to implement the rules established for international criminal justice bodies, including the Rome Statute of the ICC, into their national legal systems. The reason for the lack of direct obligations of states to implement the Rome Statute in the domestic law of states is that the main purpose of international criminal courts was to bring perpetrators of international crimes to justice before the world community, rather than creating appropriate standards for national legal systems. Despite the lack of formal obligations to implement the Rome Statute for member states in their national legal systems, such states *de facto*, given the special legal nature and tasks of the ICC, consider

themselves bound by obligations to implement the provisions of the Rome Statute into domestic law, especially its material norms. That is why, in connection with the adoption of the Rome Statute of the ICC, appropriate changes were made to national criminal law. In particular, the criminal codes of Switzerland, Finland, Hungary, Latvia, Estonia, the Republic of Lithuania and many other countries have completely identical norms to the Rome Statute, which define the elements of the crime of genocide, war crimes and crimes against humanity [2, c. 11-17].

Moreover, Ukraine took an active part in drafting the Rome Statute of the ISS, the Ukrainian delegation voted in favor of its adoption, and the Statute itself was signed on behalf of Ukraine on January 20, 2000. However, due to the adoption of the opinion of the Constitutional Court of Ukraine of July 11, 2001, the ratification of the Rome Statute of the International Criminal Court was postponed until the adoption of amendments to the Constitution of Ukraine. Such amendments to the Constitution were made only on June 2, 2016, and ratification in accordance with the provisions of the Constitution will be possible no earlier than June 30, 2019. Today is September 2020, but Ukraine has not yet ratified the Rome Statute of the ISS. The Constitution of Ukraine, the Criminal Code and the CPC of Ukraine have not been amended. Given Ukraine's recognition of the ICC's jurisdiction and the absence of any obstacles to ratification of the Rome Statute, such a delay in ratification is impractical, but only the country's political will.

In addition, Ukraine has twice used the opportunity to exercise jurisdiction over the ISS, in accordance with Art. 12 (3) of the Statute. For the first time, our state accepted jurisdiction in February-April 2014 for crimes committed during peaceful protests in Ukraine from November 21, 2013 to February 22, 2014. For the second time, Ukraine recognized the jurisdiction of the ICC for crimes committed in Ukraine from February 20, 2014. *By recognizing the ad hoc jurisdiction of the ISS, Ukraine has thus assumed the same obligations as the State party, including the obligation to implement the Rome Statute.* However, recognizing the *ad hoc* jurisdiction of the ICC only imposes on the State obligations to co-operate, without giving the States parties the rights, in particular the right to participate in the Assembly of States Parties, and thus to elect judges, the ICC Prosecutor and his deputies, etc. Our state has a direct obligation to ratify and implement the Rome Statute of the ISS of 1998 and related documents in accordance with Art. 8 Association Agreements.

In view of the above and based on the primary responsibility of Ukraine, as a state that has recognized the jurisdiction of the *ad hoc* ICC, to prosecute under national law those who committed crimes in its territory that fall under the jurisdiction of the ICC, *obviously should be implemented substantive rules, in particular those providing for the composition of international crimes. Therefore, it is substantive criminal law, not procedural, that has been implemented in the national legislation of European states.* With regard to procedural rules, given the differences in national criminal proceedings and the special, mixed legal nature of international criminal justice, procedural rules should be implemented in domestic law [2, c. 11-17].

Thus, in the context of the Ukrainian situation, the ratification of the Rome Statute should not be seen as a threat to responsibility, but as one of the tools to protect against military aggression and bring the perpetrators to justice. In general, the ratification of the Statute is a formal procedure and a logical conclusion of the process of recognition of jurisdiction, which will once again confirm the seriousness of Ukraine's intentions. The real task of the ISS is to increase national capacity to investigate crimes, bring perpetrators to justice and establish justice.

In view of the above, today modern criminalistics and each of its sections are

constantly faced with new challenges, important theoretical and methodological problems aimed at studying and taking into account current trends in scientific and technological progress, global and military threats to the world community, their impact on criminalistic knowledge [3; 4]. Therefore, in today's realities, one of the priority tasks of criminalistics is to study and develop the principles of criminalistic support of the International Criminal Court in Ukraine, which now has a lot of untapped reserves and promising practical opportunities to optimize the activities of this body.

The essence of criminalistic support of the ICC, in our opinion, should be considered in two directions: 1) as activities to create conditions for the effective application of criminalistic knowledge and tools (technical, tactical, methodological and criminalistic) and collection and examination of evidence on facts of committing international and war crimes, solving problems of criminal proceedings by procedural and criminalistic means; 2) as a specific type of criminalistic activity carried out by certain entities in order to optimize, improve the efficiency and quality of investigation and prevention of international crimes [5, c. 139-144]. This approach, in our opinion, determines the need to develop the concept of a *separate theory of criminalistic support* of the ICC in Ukraine as a priority area of research in modern criminalistics.

The International Criminal Court is by its nature an international body of criminal jurisdiction that investigates the largest war crimes and crimes against humanity of interest to the world community. The volume of evidence, the essence of the accusation, the materials collected in these cases should be as balanced and absolute as possible, so that no party has any doubts about the impartiality of the activity or a certain "political" order. At the same time, the investigation process carried out by the ISS Prosecutor's Office is important. That is, the status and capabilities of the state do not matter. The main role is played by evidence, which is investigated directly by the Prosecutor's Office. If someone is found to be involved in crimes within the jurisdiction of the ICC, the state refuses or fails to investigate them, the Court may initiate proceedings on its own initiative.

As can be seen, in such realities the problems of criminalistic support of the International Criminal Court in Ukraine of such serious international criminal offenses acquire special significance, which provides for consideration in criminalistics of three areas of such activities – technical criminalistic, tactical criminalistic and criminalistic methodics of war crimes.

Technical and criminalistic support of the ICC in modern realities involves the development and implementation of innovative criminalistic products aimed at optimizing the investigation and trial of such crimes. Such innovative products include new technical or criminalistic tools developed or adapted to the needs of investigative (judicial) practice, modern information technologies, electronic knowledge bases, methods of recording, analysis and evaluation of evidence, etc. Examples of innovations in law enforcement are identification biometric systems for static and dynamic human characteristics (electronic human identification systems for biometric features – fingerprints, appearance, appearance of the iris, DNA, handwriting, etc.), automated information search engines and databases, etc. In modern conditions of military aggression the genomic method of identification of the person on its DNA which is one of the most significant achievements of criminalistics acquires special value.

At the present stage, the investigation proposes the use of the latest scientific and technical means and technologies: audio, video control, surveillance systems, digital photography and video recording, electronic controllers, unmanned aerial

vehicles (UAVs) – quadcopters and criminalistic aerial photography. There are certain peculiarities in the introduction of innovations and in the application of criminalistic tools and technologies in remote pre-trial proceedings, during interrogation, identification by videoconference, presentation for identification of a person outside his visual and audio surveillance, etc. The use of the latest scientific and technical means is quite important when conducting covert investigative (search) actions: removal of information from transport telecommunications networks, removal of information from electronic information systems, inspection of public places, housing or other property of a person, locating electronic means, monitoring person, thing or place, audio, video control of a person or audio, video control of a place, etc. [6]. In addition, to increase the efficiency of this area of activity it is necessary to make greater use of geodetic satellite systems and aerial photography, carried out with the help of unmanned aerial vehicles [7, c. 47-57].

Along with traditional means of detection, fixation, retrieval, as well as the study of materially fixed traces and the situation in general, an innovative and very promising direction is the active *use of modern three-dimensional digital technologies and artificial intelligence* or its individual episodes (details) using 3D models, which allows you to capture and reconstruct in millimeter details the scene and its individual objects in three-dimensional space, which is not possible with the use of conventional tools and methods of research of these objects [8, c. 142-147]. Practice shows that there is an increasing need to study and record material objects located in large areas – the consequences of criminal explosions, fires, accidents and catastrophes, terrorist acts and more [9, c. 108-122; 10, c. 146-151].

In the tactical-criminalistic support of the International Criminal Court in Ukraine, the development of criminalistic recommendations on the use of criminalistic tactics in the context of armed aggression and the collection of evidence can be promising areas. Such criminalistic developments may be related to the specifics of the tactics of certain procedural actions, investigative (search) and covert investigative (search) actions aimed at solving important criminalistic tasks of investigating military and other crimes of an international nature [11; 12, c. 211-221; 13; 14]. This situation necessitates the development of new tactics for gathering evidence, reviewing the possibilities of tactical combinations and tactical operations [15; 16, c. 144-148; 17; 18], algorithms of investigative (search) actions, etc. Important areas of such research in criminalistic tactics are the problems of developing tactics for conducting procedural actions in real conditions of military aggression, tactical features of special operations, and so on [19, c. 39-45; 20, c. 90-96].

In turn, the methodological-criminalistic support provides for the need to develop a comprehensive criminalistic methodology for the investigation of such crimes [21; 22; 23, c. 359-365; 24, c. 197-198]. Such areas of research are closely linked to changes in criminal and criminal procedure law, as such changes require the improvement of existing methods of criminal investigation and the development of new criminalistic methods of investigation. Innovative developments in this field of criminalistics should be aimed at conducting research on methods of investigating new types of crimes [25, c. 170-183; 26], tactical operations, algorithms of investigators (investigations) [27, c. 201-209], checking typical investigative versions, developing criminalistic characteristics of crimes, etc. Thus, the modern realities of Ukraine require criminalistics to improve, develop and implement in practice new methods of investigating crimes committed in conditions of military aggression; crimes against the foundations of national security of Ukraine, etc. The widespread use of computer information technology contributes to the further

development of algorithms for the investigation and trial of such crimes.

Conclusions. Thus, in today's reality, one of the priority tasks of criminalistics is to study and develop problems of criminalistic support of the International Criminal Court in Ukraine, which now has a lot of untapped reserves and promising opportunities to optimize the activities of this body. In modern conditions, the need to develop the concept of criminalistic support of the International Criminal Court in Ukraine as a promising area of research in modern criminalistics becomes especially relevant and important. Today, the International Criminal Court and the ratification of the Rome Statute are the most realistic opportunity at the international level to conduct an independent investigation into the events in the occupied Crimea and Donbas, regardless of how much time and resources are needed. Moreover, the correct conduct of international policy remains an effective way out of the situation during the period of armed aggression, and the ratification of the Rome Statute [28] is one of its elements.

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