

# Formation of the forensic approach to the study of non-verbal information in criminal proceedings

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## **Abstract**

*The article is devoted to the formation of theoretical basis of the forensic approach to the study of non-verbal information in criminal proceedings. The authors have carried out the analysis of different approaches to study of non-verbal information. Formulating the forensic approach to the study of non-verbal information will allow correct determining the content of such information, successful use of it in practice, which will ultimately facilitate timely and complete disclosure of crimes. The purpose of the research in the field of non-verbal information is to develop new knowledge about the physiological and psychological state of a person in criminal proceedings. The article focuses on the definition of the legal status of a non-verbal information specialist. The provisions of the current Criminal Procedure Code of Ukraine are analyzed. In order to improve the legal regulation, the conclusion about the necessity to amend certain norms of the main criminal procedure normative legal act of Ukraine is made.*

**Keywords:** *criminal procedure of Ukraine, non-verbal information, criminal proceedings, specialist.*

**JEL Classification:** K14

## **1. Introduction**

The first forensic developments on non-verbal information appeared in the 50-60's of the XIX century, but they were episodic and most of them were in the criminal procedural plane. The study of non-verbal information in criminal proceedings as an independent approach was formed on the analysis and results of the application of the two most famous approaches to the study of non-verbal information, followed by the formation of an independent forensic approach to the study of non-verbal information. Therefore, the purpose of this article is to formulate the theoretical foundations of a forensic approach to the study of non-verbal information in criminal proceedings.

Formation of a forensic approach will allow to correctly determining the content of such information, to successfully use it in the practice of criminal proceedings, which will ultimately facilitate timely and complete disclosure of crimes.

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The need to use knowledge of non-verbal information in criminal proceedings is explained, first of all, by the tendencies of theoretical developments, and second, by the needs of practice. However, there are some debatable issues in this area. In particular, the issue of non-verbal information specialist involvement should be noted in this context. The development of provisions on non-verbal information and the use of such data in criminal proceedings are covered in the science of criminal procedure only fragmentary. At the same time, there is no analysis of the procedural aspects of the non-verbal information specialist's involvement in criminal proceedings. Therefore, the purpose of this article is to analyze the provisions of the Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine) regarding the involvement of a non-verbal information specialist in criminal proceedings and to put forward proposals to improve these standards in the CPC of Ukraine.

## 2. Methodology

In order to achieve the purpose of our research, we present as empirical data the results of our questionnaire of investigators/prosecutors/judges/experts and law students regarding their views on obtaining and using non-verbal information in criminal proceedings. In total, 1470 persons were interviewed: 254 - judges, 288 - investigators, 388 - prosecutors, 19 - experts, 521 - students of higher legal education in Ukraine (Lviv State University of Internal Affairs and National University "Odessa Law Academy").

The questioning of judges/prosecutors/experts/investigators and students included the following question: is it necessary to involve a non-verbal specialist in criminal proceedings? The respondents' opinions have significant differences. Investigators believe that such a need exists (148 persons), prosecutors (198 persons) support such an opinion, and experts are almost unanimous (13 persons) that the participation of such a specialist is necessary in criminal proceedings (already at the stage of pre-trial investigation). However, the majority of judges (121 persons) do not consider it necessary for such a specialist to participate in court proceedings. Students in the majority (385 people) consider necessary participation of a specialist in non-verbal information in criminal proceedings (Figure 1).

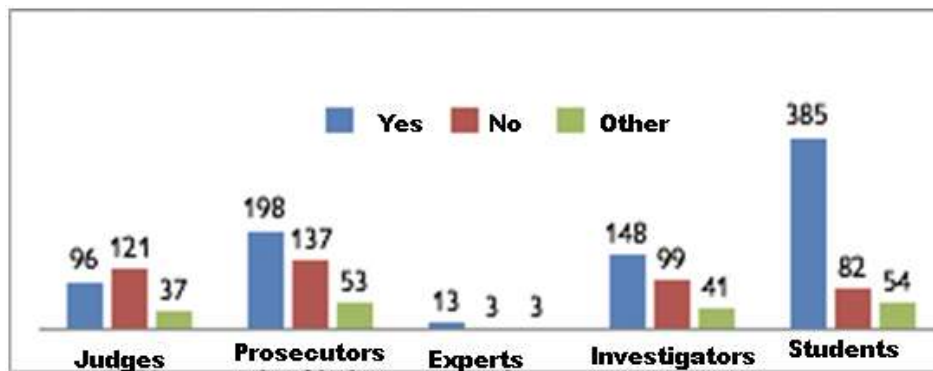


Figure 1. The need for non-verbal information specialist to be involved in criminal proceedings

### 3. Modern approaches to the study of non-verbal information

According to the stated goal, we distinguish the following modern approaches to the study of non-verbal information:

- anthropological;
- linguistic;
- forensic.

We emphasize the identification of the forensic approach as a new approach to the study of non-verbal information in criminal proceedings. So the question of formulation and justification of this approach in criminal proceedings is also the purpose of this study.

The anthropological approach should be recognized as system-forming and basic one. Within it the study of a person proceeds in four directions:

- biological (physiological), which studies the human body based on the theory of adaptation, the theory of evolution, the theory of population genetics, etc.<sup>4</sup>;
- social that covers the culture of ethnic groups and societies<sup>5</sup>;
- linguistic, covering the linguistic anthropology of the study of social communication by exploring the interconnection of language and culture, history and changes of language in society within certain nationalities<sup>6</sup>;
- archeological, which covers the historical development of man through the study of excavations and the study of historical monuments<sup>7</sup>.

<sup>4</sup> Harris M., *Division of anthropology: adaptation in biological and cultural science*. „Transactions of the New York Academy of Sciences”, 1960, Iss. 23. № 1 Series II. P. 59-65.

<sup>5</sup> Malinowski B., *Scientific Theory of Culture*. Chapel Hill: The University of North Carolina Press, 1990, 238 p.

<sup>6</sup> Голубовська І., *Антропологічна лінгвістика і класичні мови: можливості дослідження*. „Вісник Львівського національного університету. Сер. іноземні мови”. Т. 122, 2010, С. 14-19 (Holubovska I., *Anthropological linguistics and classical languages: research opportunities*. „Bulletin of Lviv National University. Series. Foreign languages”, Vol. 122, 2010, pp. 14-19).

<sup>7</sup> Сеґеда С., *Антропологія: Навч. посібник*. Київ : Либідь, 2001, 336 с. (Segeda S. *Anthropology: tutorial*. Kyiv: Lybid, 2001, 336 p.)

The greatest development the anthropological approach has received in the discipline of human biology (the study of genetic, physiological, biochemical parameters of the human body), where non-verbal information was regarded as an integral part of the human body. In the legal sphere, the anthropological approach is presented in detail in the works of V. Zavalnyuk. The researcher points out that human being the highest value of law is at the same time the object of study of many sciences<sup>8</sup>.

The linguistic approach to the study of non-verbal information follows from its historical division into:

- theoretical linguistics: empirical, normative, general and specific linguistics (formation of linguistic theories)<sup>9</sup>;
- applied linguistics: teaching methods, lexicography, translation, decoding, spelling, transliteration (practical implementation of language tasks and application of linguistic theories)<sup>10</sup>;
- practical linguistics: introspective linguistics, experimental linguistics (conducting linguistic experiments in order to verify the theories of theoretical linguistics and validate the results of applied linguistics)<sup>11</sup>.

In the linguistic approach there is the plane of study of non-verbal information in the framework of neurolinguistic programming, which combines the linguistic approach on the one hand, and on the other - focuses on the anthropological.

Non-verbal information, as an indispensable means of communication in linguistics, is explored at the verbal level, that is, the knowledge itself and the transfer of the results of that knowledge to other people. In addition, it is the linguistic approach to non-verbal information that has made it possible to identify a number of fundamental complications that can be overcome independently by linguistics. The most problematic was the selection of components of non-verbal information as certain units of the human body (segmentation, i.e. the division of the human body into a certain number of segments), the identification of a characteristic relationship between signifier and signified in terms of statics and dynamics (encryption - decryption) and the possibility of verification between participants non-verbal communication. V. Shepitko also mentions the principle of

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<sup>8</sup> Завальнюк В., *Роль юридичної антропології у сучасному правовому розвитку*, „Актуальні проблеми держави і права”. Вип. 47, 2009, С. 311-312. (Zavalnyuk V., *The role of legal anthropology in contemporary legal development*, „Actual problems of the state and law”, Vol. 47. pp. 311-312).

<sup>9</sup> Кочерган М., *Загальне мовознавство : підручник для студ. філол. спец. вузів*. Київ : Академія, 1999, 288 с. (Kochergan M., *General Linguistics: textbook for students. philol. spec. universities*. Kyiv: Academia. 288 p.)

<sup>10</sup> Філіппова Н., *Вступ до прикладної лінгвістики. Моделювання у мові : навч. Посібник*. Миколаїв : 2004, НУК. 36 с. (Filippova N., *Introduction to applied linguistics. Modeling in language: Tutorial Manual*. Mykolaiv: NUK. 36 p.)

<sup>11</sup> Ягунова Е., *Експеримент в психолінгвістике : конспект лекцій и метод. рекомендації: учеб. пособ. для вузов*. СПб. : 2005, Остров. 38 с. (Yagunova E., *An experiment in psycholinguistics: lecture notes and method. Recommendations: textbook*. allowance. for universities. SPb: Ostrov. 38 p.)

verification in certification activities<sup>12</sup>. So, what can be the level of validation of non-verbal information that is unique if it is not possible to divide it into such components without a stable semantic and syntactic structure that can be further deciphered? That is why the means of non-verbal communication require knowledge of the psychological characteristics of people, the regularities of their body movements, hand gestures, facial muscles, eye expression, the height of the voice in order to understand how to predict the behavior of opponents<sup>13</sup>.

In the context of the almost complete domination of linguistic methods and problems of language research, the analysis of non-verbal behavior also began to develop in the direction of revealing the non-verbal behavior of a certain language structure, as well as some others close to it by function and organization. Non-verbal behavior may be some text. It is not an object of the humanities, but a "natural phenomenon"<sup>14</sup>.

Accordingly, since the beginning of its existence, studies of non-verbal communication have naturally gone the way of developing a description of the language of non-verbal behavior, when extra-linguistic reality can also be considered as a specific language, since it has its structure and an ability to be the content of expressions.

The pioneer in this area was the American anthropologist R. Birdwhistell<sup>15</sup>, whose direction of thought generally appeared to be very close to M. Mauss's intuitions<sup>16</sup>. Summarizing his observations of the behavior of the Indians of Western Canada, R Birdwhistell set the task of creating an adequate description of the language of bodily behavior and, accordingly, a specific science that examines the significant functions of human bodily behavior. He referred to the relevant science as "kinesics" (i.e., the science of "kinema" - an elementary unit of bodily behavior). For this study it is fundamental that the central task of the study of gestural communication, according to R. Birdwhistell, was the segmentation of bodily behavior, the allocation of elementary units, followed by cataloging invariant cases of the use of certain "kinemas" and the creation of a semantic dictionary of gestures. As it is easy to note, the course of thought of R. Birdwhistell suggests the essential similarity of verbal and non-verbal communicative behavior, which allows studying a new object (bodily behavior) by analogy with natural

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<sup>12</sup> Шепітько В., *Психологія судової діяльності* : навч. посібник. Харків : 2006, Право. 160 с. (Shepitko V., *Psychology of Forensic Science*: Educ. Manual. Kharkiv: Pravo. 160 p.).

<sup>13</sup> Кнапп М., *Nonverbal communication in human interaction*, Wadsworth Publishing, 2013, 528 p.

<sup>14</sup> Гусева О., *Вербализация невербальных реакций (к постановке проблемы)*. „Вестник Московского государственного лингвистического университета”, №. 20 (706), 2014, С. 81-89. [Guseva O., *Verbalization of non-verbal reactions (to the formulation of the problem)*, „Bulletin of Moscow State Linguistic University”, №. 20 (706). P. 81-89].

<sup>15</sup> Birdwhistell R., *Kinesics and Context / Essays on Body Motion Communication*. 5<sup>th</sup> ed. Philadelphia: University of Pennsylvania Press, 1990, 338 p.

<sup>16</sup> Мосс М., *Техники тела* // Мосс М. Общества. Обмен. Личность. Москва : «Восточная литература», 1996, 413 с. (Moss M., *Body techniques* // Moss M. Society. Exchange. Personality. Moscow: Eastern literature, 1996, 413 p.).

language<sup>17</sup>. The ultimate goal is a complete semantic and grammatical description of "sign language", which was recorded in the corresponding vocabulary and grammar.

However, despite the importance of this aspect of non-verbal communication, there is a significant gap in this area of research today. This is explained by the fact that, for example, unlike gestures, facial movements, physiognomy, many of which sometimes have more or less unambiguous interpretation, the poses of each person are purely individual and their study is associated with certain difficulties<sup>18</sup>. The main difficulties faced by the researchers are the unstable and indiscreet nature of bodily behavior, which, excluding certain cases of the use of the body in "rituals" (for example, a gesture of the outstretched hand as a greeting), does not provide criteria for segmentation and reconstruction of syntactic structure. As a result, most researchers have gone from schematizing behavior to the level of simplified locomotor circuits, followed by subtraction of stable invariants similar to R. Birdwhistell's kinemas. According to M. Andrianov, all further studies of the poses have actually relied on this classification and could have added little to its original interpretation and to the study of this aspect of non-verbal communication.

This approach, which relies on the most complete classification of formalized elements of bodily behavior, is beautifully presented in the works of the modern specialist and researcher of non-verbal communication and semiotics G. Kreydlin, whose position is discussed in detail below<sup>19</sup>.

There is also another approach to the analysis of non-verbal communication. Its representatives seek to develop a dynamic model of interaction of communication participants, which would take into account the procedural nature of the object being investigated and the instability of the "signs" used in non-verbal communication. The opportunity to approach non-verbal interaction in this way appeared only after the emergence of models of semantics and communication, alternative to the code model, in linguistics and psychology. The frame analysis is one of such models, which was originally developed in sociology and later adapted to build semantic systems by Charles J. Fillmore<sup>20</sup>.

There is no clear definition of the "frame" in the literature, which easily explains the uncertainty of the content that is intended to capture this concept.

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<sup>17</sup> Birdwhistell R., *Implications of Recent Developments in Communication Research for Evolutionary Theory*, in: W. M. Austin (ed.), *Report of the Ninth Annual Round Table Meeting on Linguistics and Language Study*. Washington, D.C.: Georgetown University Press, 1960, pp. 149-155.

<sup>18</sup> Андрианов М., *Невербальная коммуникация: психология и право*. Москва : Изд-во Института общегуманитарных исследований, 2007, 251 с. (Adrianov M., *Non-verbal communication: psychology and law*. Moscow: Publishing House of the Institute for Humanitarian Research, 2007, 251 p.).

<sup>19</sup> Крейдлин Г., *Невербальная семиотика: Язык тела и естественный язык*. Москва : 2002, НЛО. 581 с. (Kreydlin G., *Non-verbal semiotics: body language and natural language*. Moscow: 2002, NLO. 581 p.)

<sup>20</sup> Fillmore C. J., *Frames Approach to Semantic Analysis* // *The Oxford Handbook of Linguistic Analysis* / Oxford: Oxford University Press, 2010, pp. 313-340.

“Frame” is a kind of semantic invariant that provides basic content and establishes semantic links between groups of expression elements (not necessarily language). As Charles J. Fillmore points out, “word groups are held together because they are motivated, defined, and mutually structured by particular unified constructions of knowledge or related schematization of experience for which a common term “frame” can be used”. Charles J. Fillmore also lists a long list of synonymic or closely related concepts of “frame” terms (global model, cognitive model, pseudotext, etc.), and notes within the framework of linguistic semantics the affinity of this term with the term “field”<sup>21</sup>.

In the absence of a clear definition a large number of synonyms indicate the imprecision of the meaning of the concept and its lack of conceptual elaboration, which immediately casts doubt on the effectiveness of the instrumental applicability of frame analysis for the study of non-verbal communication. At the same time, some researchers are trying to use frame semantics, which, in order to build a dynamic communication model, is complemented by ideas about the strategic nature of information processing during non-verbal communication. In order to overcome the orientation to the formal semantics inherent in most communication models, which creates inevitable difficulties in modeling non-verbal communication, M. Andrianov introduces a distinction between “paralinguistic text” and “paralinguistic discourse”.

“Paralinguistic text” is a stable structure, the elements of which are clearly sent to one or another frame. In turn, “paralinguistic discourse” is a process of communication, taken in the context of different intentions, experiences, mental attitudes, etc., that characterize specific participants in a particular interaction. Understanding is a process of strategic processing of paralinguistic discourse, during which participants “build their previous interpretative hypotheses (strategies), which can change on the basis of additional information and move seamlessly into each other, taking into account the situational context, peculiarities of participants’ repositions, etc.

Despite M. Andrianov’s claim that “such an approach to the study of body language is in line with the spirit of modern scientific ideas about the process of verbal communication”, it is not clear why his experimental method and its interpretation differ fundamentally from those controversial approaches based on building a dictionary of units of “paralinguistic text”. In this case the system of fixation of elements of activity of the person is used. Factors of group identification and intergroup perception: “... If the text of a verbal message is expanded in series, then most non-verbal “messages” are carried out simultaneously. In addition, one or another of the activated “frames” leads to a rigidly conditioned, subordinated to a certain algorithm of interpretation. And the result of the study is a generalized description of the semantic characteristics of the proposed stimulus material. At the same time, M. Andrianov ignores the fact that the results of viewing stimulus material cannot be interpreted as the results of communicative interaction: the visual study of the picture in any sense isn’t equivalent to a direct participation in

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<sup>21</sup> *Ibid.*

the situation to which the picture sends. In the first case we are talking about pure perception, the nature of which is predetermined by strictly specified context: we have material for observation. The second case refers to the complicity and, accordingly, inevitable coordination of the observer (which is such in a fairly conditional sense, due to the loss of a position isolated from the context of the event) with all elements of the structure of the situation.

As it proclaimed by A. Asmolov and I. Feigenberg, the non-verbal communication is mainly an expression of the semantic sphere of the individual. It can be considered as a direct channel of transmission of personal meanings. Understanding of the non-verbal communication allows us to explain the unsuccessfulness of numerous attempts to create vocabulary code, a discrete alphabet of non-verbal communication, triggered by a linguocentric setting. The inability to implement simultaneous dynamic semantic systems of personality in discrete indifferent values pre-empts failure to search for discrete formalized vocabulary of gestures and body movements. According to these authors, "non-verbal manifestations of semantic attitudes fulfill a compensatory function in violation of language communication". In such cases, when for some reason the language cannot be used, the meanings that meet the essential communicative needs of the individual "are expressed in manifestations of activity"<sup>22</sup>.

Criticizing linguocentrism in the analysis of non-verbal communication, A. Asmolov and I. Feigenberg refer to experimental material, the evidence of which suggests that there is no direct link between language impairments and, for example, pantomime. The heterogeneous experimental material analyzed by the authors allowed them to argue reasonably that "there can be no direct link between language impairment and non-verbal communication, since the meaning of the latter is expressed by the latter in human behavior; meaning is transmitted primarily through language"<sup>23</sup>.

The indisputable advantages of the position of A. Asmolov and I. Feigenberg include the following features: 1) taking into account the fundamental independence of the non-verbal aspect of communicative interaction, the presence of not only formal but also semantic specificity in it; 2) the desire to consider the non-verbal communication dynamically as an expression of the subject's personal meaning in a particular situation.

#### 4. Forensic researches on non-verbal information

Most forensic research focuses on multi-entity models, where communication is described as the process of sending messages to the external environment, or in other way, models that ignore the subjects of communication, exploring only the process of information flow. In both cases, the communication event, which involves the communication of two or more subjects, is not taken into

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<sup>22</sup> Фейгенберг И., Асмолов А., *Некоторые аспекты исследования невербальной коммуникации: за порогом рациональности*. „Психологический журнал”, Т. 10. № 6, 1989, С. 58-66. (Feigenberg I., Asmolov A., *Some aspects of the study of non-verbal communication: beyond the threshold of rationality*, „Psychological Journal”, Vol. 10. № 6, 1989, pp. 58-66.)

<sup>23</sup> *Ibid.*



account. At the same time, communication is not carried out by the analogy with the communication of mechanisms that consistently exchange information on given channels, but accidentally involves various means, the information exchange through which is non-linear and non-discrete. S. Kivalov emphasizes that the legislator, calling the investigation "pre-trial" indicates his relationship with the basic part of the trial - a judicial investigation<sup>24</sup>. According to V. Tishchenko, the information processes, which are the basis of the proving, should be divided into the following stages: 1) search and detection of forensically relevant data; 2) perception and fixation of forensic relevant data; 3) data processing; 4) using of data<sup>25</sup>.

Such methodological situation in information communication research in criminology leads to those problems, where the starting points of the analysis are:

- the subject who is the source of non-verbal information, or the subject who receives and decrypts this information;
- the communication structure that consists of several elements.

In other words, there may be a subject or interaction between such subjects, or perhaps the first and the second in the interaction system. There is also the opposite view of the impossibility of the simultaneous existence of the first and second. Unfortunately, such positions completely block the possibility of creating a separate approach to non-verbal information. They are also a radical problem for the study of both verbal and non-verbal information in forensics.

The clarification of the essence of the provisions on non-verbal information can only occur if the crucial issues of the nature of non-verbal information are resolved. At the same time, historical and contemporary approaches to the study of the latter should be explored.

The gradual adaptation of the provisions on non-verbal information to the conditions of criminal proceedings and forensic science is conditioned by the practical need to apply innovative approaches and methods in criminal proceedings. Such is the nature of the provision on non-verbal information in the context of criminal proceedings and forensic activity. In turn, this is the third approach – the forensic one - regarding the provisions on non-verbal information.

### 5. Non-verbal specialist in criminal proceedings

It is advisable to reveal the peculiarities of participation of a non-verbal information specialist in criminal proceedings in two correlatives, but independent directions:

- criminal procedural;
- forensic.

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<sup>24</sup> Ківалов С., Алєнін Ю., Стрєльцов Є., Тіщенко В., *Розслідування злочинів проти особи : керівництво для слідчих*. Одеса : Юридична література, 2014, 203 с. (Kivalov S., Alenin Yu., Streltsov E., Tishchenko V., *Criminal investigation: guide for investigators*. Odessa: legal literature, 2014, 203 p.).

<sup>25</sup> Тіщенко В., *Теоретичні і практичні основи методики розслідування злочинів*. Одеса : Фенікс., 2007, 260 с. (Tishchenko V., *Theoretical and practical foundations of crime investigation techniques*. Odesa: Feniks, 2007, 260 p.).

The criminal procedural direction is stipulated by the CPC of Ukraine, which regulates the current participation of any specialist in criminal proceedings, including a specialist in non-verbal information.

A non-verbal information specialist may be involved by the official conducting any investigative (search) activity. Typically, the participation of a specialist on non-verbal information in these activities means:

- assistance in the identification, anchoring and removal of objects and documents, while the assistance of a non-verbal specialist may be necessary to identify traces of crimes that are not in the form of objects and documents (e.g., perfect traces, etc.);

- assistance in the application of technical means of fixing the course and the results of investigative actions and does not constitute an examination of the materials of criminal proceedings. However, such assistance in the use of technical means by a non-verbal specialist in the investigation of criminal proceedings materially limits his or her ability. Firstly, because the assistance involves the help to the official in the application of the technical means rather than their own use by the specialist. Secondly, such assistance can only occur in the course of a procedural action (for example, an inspection of an object with the detection of invisible traces using a special light source).

In accordance with the above, the procedure and results of involvement of a non-verbal information specialist for the implementation of the first of these functions are reflected in the relevant protocol of investigative action. However, this does not constitute an independent source of evidence. Part 2 of Article 84 of the CPC of Ukraine defines a comprehensive list of procedural sources of evidence (testimony, physical evidence, documents, expert reports), among which there is no specialist's conclusion. Thus, it becomes necessary to supplement the above article of the CPC of Ukraine with a new source of evidence, as a specialist's conclusion. However, there is also the opposite view that according to the current legal regulation in criminal proceedings the fact that a specialist conducts certain actions during investigative actions may have probative value within the so-called - "supporting evidence", that is, such opinion of a specialist can be properly reflected in the investigative action report.

The features that characterize a non-verbal information specialist as a participant in criminal proceeding according to the current CPC of Ukraine are the following:

- a non-verbal information specialist is a person with special knowledge;
- a non-verbal information specialist is not interested in the results of criminal proceedings;
- a non-verbal information specialist is recruited in accordance with the procedural rules by those participants of the in criminal proceedings who are vested with such a right;
- a non-verbal information specialist is a procedural figure and has his own procedural status;

- a non-verbal information specialist cannot act as another participant in criminal proceedings in which he or she is involved as a specialist;
- a non-verbal information specialist is involved in criminal proceedings of the court.

As problematic and unresolved remains the question of research that can be conducted by a non-verbal information specialist and, as a result, the procedural significance of his or her conclusion based on those studies.

The procedural form of the use of specialized knowledge of non-verbal information in criminal proceedings depends on the following criteria:

- stages at which specific knowledge of non-verbal information is applied;
- legal regulation of the procedure for involving a non-verbal information specialist and the use of his knowledge in criminal proceedings;
- the procedural significance of the results of the use of specialized knowledge of non-verbal information.

Of course, the analysis of the current legislation does not give grounds for considering the activity of a specialist on non-verbal information. The current CPC of Ukraine defines the order of participation of the specialist as a whole, without defining the sphere of scientific and professional interests of the specialist. In addition, it would be inappropriate, because of the existence of scientific fields of knowledge, their improvement and the possible development of others and the emergence of new professional fields. Therefore, a further detailed analysis of the criminal procedural aspects of the application of a comprehensive approach to the use of special knowledge of non-verbal information in criminal proceedings will proceed by analogy to the general status of "specialist", as enshrined by the legislator in the CPC of Ukraine.

According to the Article 3 of the CPC of Ukraine a specialist can be a participant in criminal proceedings. Article 71 of the CPC of Ukraine clearly states that "specialist in criminal proceedings is a person who has special knowledge and skills necessary to use technical or other devices and who is able to consult during pre-trial investigation and trial on issues which require special knowledge and skills". Parties of criminal proceedings may apply during trial for committing a specialist or for using his explanations and assistance. Criminal procedural legislation also defines the rights of a specialist: 1) upon permission of the party to criminal proceedings that committed him or court, put questions to participants to an investigating action; 2) use technical means, devices, and special equipment; 3) draw attention of the party to criminal proceedings that committed him or court to particular circumstances or properties of objects and documents; 4) review records of the investigation actions he participated in, and submit comments thereon; 5) receive remuneration for the job done and compensation for expenses incurred in connection with participation in criminal proceedings; 6) request that protective measures be taken as prescribed by law. In addition, the legislator defines the duties of a specialist: 1) appear when summoned by the investigator, prosecutor or court and have with him technical equipment, devices, and

appliances; 2) follow instructions of the party to criminal proceedings that committed him or court, and give explanations on the questions asked; 3) not to disclose, without authorization of the party which employed him or the court, information which came to his knowledge in connection with his fulfilling his duties; 4) recuse himself if grounds specified in the present Code are present. If a specialist does not appear before court without valid reasons or fails to notify the reasons for his non-appearance, all costs related to the adjournment of court session shall be imposed by court on the specialist concerned.

According to Article 105 of the CPC of Ukraine written explanations of specialists who participated in the conduct of procedural action concerned can be annexes to the record.

Investigator or public prosecutor may execute the ruling to authorize a search of home or any other possession of a person. The victim, the suspect, defense counsel, representative, and other participants to criminal proceedings may be invited to attend in it. Whenever investigator, public prosecutor needs assistance in issues requiring special knowledge, they may invite specialists to participate in the search (Article 236 of the CPC of Ukraine). In addition, during inspection the invited specialist, upon the assignment of investigator or public prosecutor, may carry out measurements, photographing, audio or video recording, draw up plans and schemes, prepare graphical images of the place or particular objects, produce prints and moulds, examine and seize objects and documents of importance for criminal proceedings (Part 7 Article 237 of the CPC of Ukraine). If necessary, investigative experiment may be conducted with participation of a specialist (Part 2 Article 240 of the CPC of Ukraine). In cases when an expert examination is commissioned by the court, the taking of samples for same have to be carried out by the court or, on its request, by a specialist involved for this purpose (Part 1 Article 245 of the CPC of Ukraine).

Article 262 of the CPC of Ukraine (inspection and seizure of correspondence) proclaims that seized correspondence should be inspected in the postal office, which was assigned control and seizure of this correspondence, with participation of this office's representative and, in case of need, of a specialist. In the presence of the said individuals, investigator decides on the opening of correspondence and inspects seized correspondence. Article 266 of the CPC of Ukraine regulates the examination of information obtained through the use of technological devices. According to its Part 1 information obtained through the use of technological devices have to be examined, if necessary, with participation of a specialist. After this action public prosecutor have to take measures to preserve information obtained. Mediums and technological devices which helped obtain information may be the subject of examination by appropriate specialists or experts as prescribed in the CPC of Ukraine.

Part 3 of Article 357 of the CPC of Ukraine states that while examining exhibits, participants in court proceedings have the right to ask questions regarding these exhibits to the specialists who examined them. Participants in the court proceedings are also entitled to ask questions about the documents to specialists

(Part 2 of Article 358 of the CPC of Ukraine) and to find out the information contained in audio and video recordings (Part 3 of Article 358 of the CPC of Ukraine).

Separately Article 360 of the CPC of Ukraine regulates the order of consultations and explanations of a specialist. When examining evidence, the court may avail itself of oral advices or written explanations given by a specialist based on his special knowledge. The specialist may be asked questions about the substance of oral consultations or written explanations he has given. Individual upon whose motion the specialist was invited, asks questions first, then other participants in criminal proceedings ask questions. Judge presiding in court session may put questions to the specialist at any time during examination of evidence. As an exception, having found it necessary to inspect a certain place, the court conducts field inspection as attended by participants in court proceedings and, when circumstances so require, with the participation of witnesses, specialists, and experts (Part 1 of Article 361 of the CPC of Ukraine).

Access to materials containing information which constitutes State secret, should be granted specialist, who have been granted access to State secrets and who require such access in the discharge of his rights and duties as laid down in the CPC of Ukraine, proceeding from circumstances established during criminal proceedings. Decisions to grant access to particular secret information and mediums thereof are made in the form of orders or written instructions by the head of pre-trial investigation agency, public prosecutor, court. Specialist is not allowed to take notes from and copy materials containing State secrets (Article 517 of the CPC of Ukraine).

Thus, the procedural status of a non-verbal information specialist is a complex concept, which is a legally regulated set of rights, duties, responsibilities and procedural guarantees of a specialist's activity under the CPC of Ukraine as a participant in criminal proceedings, based on its goals, objectives, functions and principles involvement in criminal proceedings. For this reason, the basis of the procedural status of a specialist in non-verbal information is formed by:

- the purpose of engaging a non-verbal information specialist (the realization in criminal proceedings of opportunities that give the use of special knowledge of non-verbal information to solve the problem of criminal proceedings);
- the tasks to be resolved by a non-verbal information specialist within the framework of his involvement in criminal proceedings (advisory and technical assistance to participants);
- the functions of a non-verbal information specialist (participation in procedural actions, giving written advice (conclusions) to parties on issues requiring the use of special knowledge, and giving testimony on issues requiring the use of special knowledge in non-verbal information);
- the principles for the participation of a non-verbal information specialist in criminal proceedings (competence, independence and disinterest in criminal proceedings).

The form of the use of non-verbal information in criminal proceedings is a set of external features that characterize the procedure and outcome of the use of non-verbal information in the prevention, termination, detection and investigation of criminal offenses, as well as in court criminal proceedings.

The use of non-verbal information knowledge as a separate type of specialized knowledge can be defined as a specific group of actions related to the use of non-verbal information specific knowledge in criminal proceedings, combined by similar features specific only for this group.

## 6. Conclusion

In our opinion, according to the legislator's position there are no grounds to restrict the procedural form of involving a non-verbal information specialist in criminal proceedings. In this case the choice of procedural form should be made by the official conducting the criminal proceedings. However, the result of involving a non-verbal information specialist in criminal proceedings should be improved by making the following changes to the current CPC of Ukraine:

- Part 1 Article 71 of the CPC of Ukraine should be reworded as follows: „Specialist in criminal proceedings is a person who has special knowledge and skills necessary to use technical or other devices and who is able to conduct research and to consult during pre-trial investigation and trial on issues which require special knowledge and skills and has the right to give an opinion on issues that arise during criminal proceedings that relate to his area of knowledge.”

- Part 4 Article 71 of the CPC of Ukraine should be reworded as follows: „The specialist has the right to:

- 1) review the materials of the criminal proceedings he participated in, and submit comments thereon;
- 2) put questions to the participants of the procedural action related to the subject and object of research, consultation or explanation;
- 3) use technical means, devices, and special equipment;
- 4) summarize in the specialist's opinion the information revealed in the course of the research that is relevant to the criminal proceedings and about which he was not asked questions;
- 5) be present at the time of committing procedural actions concerning the subject and objects of the research;
- 6) draw attention of the party to criminal proceedings that committed him or court to particular circumstances or properties of objects and documents;
- 7) review records of the investigation actions he participated in, and submit comments thereon;
- 8) review records of the investigation actions he didn't participate in, if such actions action related to the subject and object of research, consultation or explanation, and submit comments thereon;
- 9) receive remuneration for the job done and compensation for expenses incurred in connection with participation in criminal proceedings;

10) request that protective measures be taken as prescribed by law.”

- Part 5 Article 71 of the CPC of Ukraine should be reworded as follows:

„The specialist is required to:

1) conduct research personally and give a written opinion on the questions asked to him and, if necessary - to explain it;

2) personally appear when summoned by the investigator, prosecutor or court and have with him technical equipment, devices, and appliances and give explanations on questions asked;

3) not to disclose, without authorization of the party which employed him or the court, information which came to his knowledge in connection with his fulfilling his duties;

4) recuse himself if grounds specified in the CPC of Ukraine are present.

Thus, the article analyzes the norms of the current CPC of Ukraine regarding the procedural figure of a specialist, including a specialist in non-verbal information. The necessity of amendments to some provisions of the CPC of Ukraine for optimization and effectiveness of involvement of a specialist, including a specialist in non-verbal information, is stated.

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