Legal Regulation and Practice of Psychophysiological Polygraph Examinations in the Republic of Lithuania

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Abstract
The authors present the application of polygraph examinations in pre-trial investigations and criminal cases by the police of the Republic of Lithuania. The first part reviews legal regulations of polygraph examinations in the Republic of Lithuania. The second describes the practice of polygraph examinations, and the third presents court decisions and the approach of courts to polygraph examination conclusions.

Introduction
Lithuania is relatively new to using polygraph technology. Historical sources show that its theoretical origins can be traced back to 1933 (Lazersonas, 1933). The country acquired its two first polygraphs in 1992 after the former Soviet Union broke apart.

Data verification during a pre-trial investigation is a constant activity. Its objective is to verify all the data received in the course of the procedure. The data received from one source should be verified using other sources and information. Wider use of the polygraph and its conclusions combined with other information (data), which is gathered during a pre-trial investigation and important when investigating and examining a case, helps to achieve the purpose of the criminal investigative procedure. The use of the polygraph during criminal investigations is one of the many ways to verify the data and circumstances important for the investigation.

Part 1. Legal Regulation of Polygraph Examinations

In 2000, the Law on the Use of a Polygraph (hereinafter referred to as the Law) was adopted and the rules for polygraph examinations were approved by the resolution of the Government of the Republic of Lithuania in 2002. The Law regulates who may be subject to polygraph testing, under what circumstances, and what the rights are for examinees and examiners. Pursuant to the Law, polygraph examinations may be conducted only in the cases listed in the Law, or only when activities or service of civil servants, officers or soldiers are related to the use, protection and examination of classified information. Polygraph examinations may be used when deciding whether to grant a permission to work and get familiarized with sensitive information; when there is a sound basis to consider that a person has concealed certain information; an internal or intelligence investigation is conducted with respect to the person, or; when there have possibly been violations of the law (disciplinary or criminal) committed by a person provided they are related to sensitive information.

The Law prescribes two cases when polygraph examinations can be performed. In the first case, the conclusions of the examination are used as additional information describing the examinee and his/her circumstances. This means that the results of the examination do not have any legal consequences (de facto). In the second

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case, a person may have been denied permission to work or get familiarized with sensitive information, or such permission may have been cancelled (de jure), when the results of the examination are negative or when the person refuses to undergo a polygraph examination, after taking into consideration the available information related to the person examined and his/her environment.

The Law does not regulate the use of the polygraph in criminal cases. As a result, the Law does not allow for polygraph examinations in criminal procedures, which limits the opportunity to thoroughly and objectively investigate criminal activities. Investigation of criminal activities is regulated by the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as CCP). Article 20 of the CCP stipulates that only the data obtained in the manner prescribed by law, by lawful means, which prove or disprove at least one circumstance relevant for a fair disposition of the case, may be regarded as evidence. The CCP does not provide for a comprehensive and specific list of actions for the grounds of which data can be gathered in criminal activities or on the person who has committed it. Neither is there any list of evidence for the grounds of which courts would be supposed to consider the issue of the person’s innocence or guilt. The CCP requires that data should be obtained lawfully and verified during the investigation or proceedings.

The CCP does not regulate any types of examinations, including polygraph examination, dactylographic\(^3\) examination, DNA tests, traseologic\(^4\) tests and handwriting. On the other hand, a direct restriction, prohibition or detailed regulation of means and methods in the CCP may mean violation of principles and aims of the criminal procedure. These might include violations of a person’s right to a defense, or violations of the right of a pre-trial investigation officer, a prosecutor or the court to address a competent expert in case a demand for specific knowledge occurs.

In case a need for specific knowledge occurs during a pre-trial investigation, the legislators grant a pre-trial investigation officer the right to address an expert, who possesses the necessary knowledge and skills. The status of this party to the proceedings is regulated by Article 89 of the CCP. Pursuant to the CCP, specific knowledge is used in the following forms: examination by an expert (Articles 89–90 of the CCP), expert’s participation when performing actions during a pre-trial investigation (Article 180 of the CCP) and expertise (Articles 84–88 of the CCP). Upon completing an examination of objects, the expert submits his/her conclusion, the content and form of which are provided in Article 90 of the CCP.

In order to make legal regulation of the polygraph at least slightly clearer in the police system, and in order to spread the application and practice of this type of examination, the following pieces of legislation were approved by the orders of the Commissioner General of the Lithuanian Police: the Concept of Application of Polygraph Examination When Fighting Crime, Corruption of Police Staff and When Selecting Police Officers of 2007; the Instructions for the Application of Polygraph Examination in Police Activities and for Application of Polygraph Examination to Civil Servants of 2009.

To sum up this part, it is clear that polygraph examinations are regulated by a special legal act, i.e. the Law on the Use of a Polygraph, in the Republic of Lithuania. When seeking to perform polygraph examinations during a criminal procedure, another special legal act is observed, i.e. the Code of Criminal Procedure of the Republic of Lithuania. One therefore confronts a legal collision, when it is not clear which special legal act should be followed, which of these legal acts should be considered a special legal act, and which one should be considered a general legal act when conducting polygraph examinations or investigating a crime. It is not clear which of these acts is superior.

\(^{3}\) Fingerprints
\(^{4}\) Impression evidence
Part 2. Polygraph Examination Practice

In comparison with the previous years (2001-2007), the results of 2008 and 2012 show that polygraph examinations are used increasingly more often in pre-trial investigations when collecting evidence that proves a suspect’s guilt (innocence), disclosing circumstances of the criminal act commission, its reasons, ways, when looking for the instruments of the crime and place of a body in order to deny or confirm the genuineness of the evidence of the proceedings participants (Figure 1). (Kovalenka & Saldžiūnas, 2011)

Figure 1. Dynamics of psychophysiological polygraph examinations in criminal cases from 2001 to 2012

Over the period from 1992 to 2012, pre-trial investigation officers of police agencies were the ones who instructed polygraph examinations to be performed in criminal cases which made up 83.3 per cent of all the cases (Figure 2).
Over the period from 1992 to 2012, polygraph examinations were applied in 84 criminal cases (or 54.5 per cent of all the cases) when investigating murders (Figure 3).

**Figure 3. Polygraph examinations (distribution) by different kinds of criminal acts from 1992 to 2012**

When investigating criminal acts, the majority of data is received directly from witnesses. Witness evidence is very important when investigating criminal acts. Pre-trial investigation officers pay a lot of attention to the verification of the reliability of information provided by witnesses. After analysis, 102 persons were examined during the period from 1992 to 2012.

Over the period from 1992 to 2012, 139 suspects, whose procedural status in the
course of the criminal act investigation was a suspect, were examined by a polygraph. The evidence produced and versions given by the suspects were verified by the pre-trial investigation officers in various ways, including polygraph examinations (Figure 4).

**Figure 4. Procedural status of persons examined in criminal cases from 1992 to 2012**

![Procedural status of persons examined in criminal cases from 1992 to 2012](image)

The authors analyzed the dynamics of polygraph examinations in Figure 5 and Figure 6. The application of the Event Knowledge Test (EKT)\(^5\) (Saldžiūnas & Kovalenka, 2008a; 2008b; 2008c; 2009a; 2009b; 2009c; 2010;2011a; 2011b; 2012a; 2012b; 2012c; 2013) in pre-trial investigations in order to investigate and disclose crimes started in 2005.

Examination conclusions were of little use until 2005. Courts did not even have a chance to express their opinions about this source of evidence because investigators and prosecutors themselves did not know how these conclusions could be used. At that time, polygraph examinations were perceived as experimental and were outside the scope of the criminal procedure. Another important consideration is that investigators and prosecutors simply did not rely on this examination and did not even imagine how such conclusions could be used when planning actions of the pre-trial investigation as well as planning and conducting tactical actions (Figure 5).

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\(^5\) Event Knowledge Test (EKT) is new version of Concealed Information test (CIT).

Editor’s note: The EKT is not known to be used outside of Lithuania.
Figure 5. Influence (usefulness) of polygraph examinations or their use in pre-trial investigations and court sentencing until 2005

Figure 6 makes it obvious that after produced by the participants of the 2005 investigators and prosecutors (82 per cent of all the investigations conducted) use examination conclusions when planning further actions, including actions of the criminal procedure. In addition, the increase in the use of expert conclusions may be explained by the fact that the EKT started in 2005. Examination conclusions using this test have become more understandable when disclosing criminal acts. After the analysis of examination conclusions of this type, it is possible to easily, quickly and quite efficiently verify certain circumstances of the crime, versions of crime disclosure and evidence produced by the participants of the proceedings. Moreover, it is possible to model the situation of crime commission and the roles the persons played when committing a crime on the basis of the conclusions only. As the EKT was further used and developed, courts gradually formed certain legal practices (the Supreme Court of Lithuania is going to make an overview of the current court practice in the future) regarding the inclusion of the conclusions of polygraph examinations among the sources of classical or other evidence which allow to confirm or negate the circumstances important in a criminal case.
Part 3. Court Practice in Polygraph Examinations

Currently, there are more than 50 court judgments in Lithuania, where the court took into account the conclusions of polygraph examinations. Some court judgments are provided below.

a) The court recognized the results of polygraph examinations as evidence.

Vilnius District Court stated in the descriptive part of the judgment that having performed a polygraph examination of suspect M. with regard to his mother’s murder it could be considered that suspect M. was aware of all the circumstances and details of the murder. Suspect’s M. denial of guilt, concealment of information and statement that he did not know anything about the circumstances of the murder were therefore considered an attempt to evade criminal responsibility.

Similar judgements were rendered by the Klaipėda District Court and Siauliai District Court.

b) The results of polygraph examinations are a part of the data and are taken into account to the “extent it is related to the case.”

There is no consistent court practice in Lithuania in terms of attributing polygraph examination to the source of evidence. The courts state in their judgments that such examinations are not regulated in the Code of Criminal Procedure. When making a judgment on the guilt of suspects Š. and S. with regard to a vehicle theft, Vilnius 1st District Court and later the Supreme Court of Lithuania stated in their judgments that the Code of Criminal Procedure of the Republic of Lithuania did not stipulate polygraph use when assessing the suspect’s evidence. Pursuant to Article 4.2 of the Law on the Use of a Polygraph, suspect Š. was not a subject of the investigation; however, he agreed to have his evidence examined by means of a psychophysiological method. The circumstances identified during this examination thus were taken into account to the extent they complied with the collected and investigated evidence.
c) Results of polygraph examinations are not taken into account during court proceedings.

Kaunas District Court convicted suspect J. with regard to a particularly violent murder and sentenced him to 14 years of imprisonment. When conducting the pre-trial investigation on this criminal act, suspect J. was subjected to polygraph examination and based on its conclusions it could be assumed that suspect J. murdered victim Z. However, the court did not mention the polygraph expert’s conclusion and did not consider it along with other evidence when assessing the evidence on suspect J’s guilt.

The absence of a uniform court practice partially makes an adverse impact on prosecutors and pre-trial investigation officers’ attitude towards the use of polygraph examinations in the investigation of criminal acts. However, it is arguable whether this examination should become evidence in the criminal procedure or whether they should be viewed as they are today (as a means to verify significant investigation data and circumstances). Discussions also should be held about the need to regulate polygraph examinations in the Code of Criminal Procedure of the Republic of Lithuania.

Conclusions

The analysis of polygraph examinations conducted when investigating criminal acts showed that these examinations are important. These examinations make it possible to identify the suspect who committed a criminal act, circumstances of the incident, time of the incident, the scene of the crime, criminal instruments and the location of items seized. It should be mentioned that various problems are faced when imposing or employing polygraph examinations in the course of the investigation of criminal acts just as in every other field.

1. Use of polygraph examinations in pre-trial investigations is an efficient means. There are a lot of possibilities to apply this kind of examination; however, not all of them are used when investigating criminal acts due to legal, organizational and human resource problems.

2. The use of polygraph examinations has a 90-year history, and there is a considerable amount of information on this topic, much of it is rather diverse. It is necessary to arrange conferences, lectures and workshops and disseminate information through the media to help the public understand the meaning of these examinations. Particular attention should be paid to the improvement of the qualification of investigators, prosecutors, judges and lawyers and broadening of their knowledge about these examinations.

3. The polygraph examiners are to take all possible measures to avoid mistakes and all doubts should be evaluated to the benefit of the person examined and not against him/her. The examiners’ work is to be organized and performed in such a way that their actions and conclusions are as understandable as possible to investigators, prosecutors, judges and lawyers. It is important that the examiners exercise their responsibility in refusing to perform polygraph examinations on questionable topics, on unsuited persons or in unsuitable conditions. These results or conclusions may be unreliable or indefinite.

4. The authors’ experience with polygraph examinations and practice shows that the EKT provides investigators, prosecutors and judges an almost complete understanding about the examination conclusions and results. EKT does not help to establish whether a suspect is guilty or not, but it clearly shows what a person knows or does not know (non-openness during the examination), and it allows them to understand the circumstances of the crime, as well as evidence of the participants of the proceedings, and their versions and details.
References

Lazersonas, V. (1933), Psichologiniai metodai nusi kaltimui išaiškinti (Psychological methods for detect crimes) // Kovokime su nusikaltimais: metinis Valstybės saugumo departamento leidinys. Kaunas [text in Lithuanian]


Saldžiūnas, V. & Kovalenko, A. (2008c), The event knowledge test (EKT) in Polygraph Examination (common notice of tactics). European Polygraph, 3-4(5-6), 209-220.


Saldžiūnas, V. (2009b). EKT lub test wedzy o zdarzeniu, In Wykorzystanie wariografu (poligrafu) w badaniach kryminalistycznych oraz kadrowych (21-23), Wydawnictwo wyższej szkoły policji w Szczytno [text in Polish].


