

UDC 351.745.7(477)

DOI: 10.56215/naia-herald/1.2023.09

Legality of traditional techniques, means and modern technologies of visual surveillance

Serhii Cherniavskiy*

Doctor of Law, Professor

National Academy of Internal Affairs of Ukraine

03035, 1 Solomianska Sq., Kyiv, Ukraine

<https://orcid.org/0000-0002-2711-3828>

Andrii Vozniuk

Doctor of Law, Professor

National Academy of Internal Affairs of Ukraine

03035, 1 Solomianska Sq., Kyiv, Ukraine

<https://orcid.org/0000-0002-3352-5626>

Mykhailo Hribov

Doctor of Law, Professor

National Academy of Internal Affairs

03035, 1 Solomianska Sq., Kyiv, Ukraine

<https://orcid.org/0000-0003-2437-5598>

■ **Abstract.** From the perspective of law enforcement and other professions, covert visual surveillance can be an effective and necessary tool for performing tasks such as investigating crimes, fighting terrorism, and surveillance of suspicious individuals or groups. The relevance of covert visual surveillance depends on the context and situation. The research aims to assess the established techniques and modern methods of covert visual surveillance, as well as the means used to fulfil its tasks from the legal perspective. The study uses comparative legal, historical, and legal, logical, and legal methods, systemic and structural analysis, as well as methods of logic (analysis, synthesis, induction, deduction, analogy, comparison, and generalisation). The identification of specific techniques and means of covert visual surveillance allowed the author to formulate a legal assessment of the use of each of them in different conditions and by different subjects. Based on the results of the research, the author provides a legal description of various types of surveillance, including specific techniques for placing observers in space concerning various objects: movable and immovable; persons, objects, and certain places. The author assesses the legality of the use of technical means used during surveillance, as well as the means of ensuring its secrecy. The conditions for the legitimacy of the use of specific groups of techniques and means for conducting visual surveillance by various subjects are determined. It is argued that the use by private law entities of mobile surveillance techniques for monitoring a person identified by them is unlawful and will indicate the illegal collection of confidential information about them, committed by a group of persons by prior conspiracy. The practical value of the research lies in the possibility of direct use of its results by representatives of law enforcement agencies and other professions to choose acceptable (lawful) methods and means of conducting covert visual surveillance and avoid the use of unacceptable (unlawful) ones

■ **Keywords:** law enforcement agencies; investigator; operational units; technical means; lawful use; human rights; covert surveillance

■ Suggested Citation:

Cherniavskiy, S., Vozniuk, A., & Hribov, M. (2023). Legality of traditional techniques, means and modern technologies of visual surveillance. *Scientific Journal of the National Academy of Internal Affairs*, 28(1), 9-21. doi: 10.56215/naia-herald/1.2023.09.

■ *Corresponding author

■ Received: 28.11.2022; Revised: 15.02.2023; Accepted: 28.03.2023.



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

■ Introduction

Covert visual surveillance is often perceived as an elementary measure that can be carried out by anyone without special training. But this conclusion is the result of a superficial perception. Practitioners and scholars who have studied this issue stated that conducting visual surveillance by amateurs usually leads to quick exposure, and preparation requires a long time and special techniques (Hribov *et al.*, 2018). For these reasons, in historical retrospect, several requirements have always been put forward for the personal qualities and professional training of covert observers. At the same time, surveillance was organised following the provisions of secret regulations with the mandatory use of techniques and means developed and tested in practice (Chisnikov *et al.*, 2009). This approach is still relevant today. However, it is now combined with factors that need to be considered in the practical application of this method of cognition. Firstly, it is the general availability of information on visual observation techniques contained in fiction, journalistic and open documentary, and scientific and methodological literature (Horbachova, 2005; Pryhunov *et al.*, 2020; Pryhunov *et al.*, 2022). Secondly, it is the possibility of using modern technologies to perform visual surveillance tasks (Zhang, 2022).

The use of these techniques and means often significantly restricts and violates fundamental human rights, and under certain conditions can be interpreted as signs of a crime. This makes it particularly important to study this topic as a component of the protection of human rights and freedoms, prevention of unjustified interference with personal life, and ensuring that law enforcement agencies and private detectives operate only following the law.

However, modern legal science and practice have not raised the issue of the legality (admissibility) of specific techniques and means of visual surveillance. For example, in recent studies of the research area, scholars assessed the legality of innovative surveillance technologies in the broad sense of the term (including intelligence gathering from social media, digital forensics, covert online investigations, etc. In addition, issues of legal regulation of the system of means of covert detection and secret control of the activities of persons who pose a risk of committing certain types of criminal offences, including terrorist acts (Vavoula, 2023), domestic and

family violence (Vitis, 2023), etc. are being studied. At the same time, there is a lack of scientific attention to the legal analysis of specific techniques and means of covert physical visual surveillance.

The foregoing necessitates the study of the legality of the use of specific techniques, means, and technologies in the course of visual surveillance of a person by authorised entities. In addition, it is also reasonable to determine the legal consequences of the use of these techniques, means, and technologies by entities that do not have the legal authority to conduct covert visual surveillance (journalists, private detectives, employees of security agencies, etc.).

The research aims to determine the legitimacy of the use by various entities of the techniques and methods of covert visual surveillance established in practice and also to provide a legal description of the use of special means and the latest technologies for such surveillance.

■ Materials and Methods

The legislative acts of Ukraine that regulate the social relations covered by the object of study were used in this study. Firstly, these are the laws that regulate the issue of covert visual surveillance of a person by law enforcement agencies (the Criminal Procedure Code of Ukraine¹, the Law of Ukraine “On Operational and Investigative Activities”²), as well as the issue of video recording in public places (the Civil Code of Ukraine³). Secondly, legal acts establish the procedure for collecting, storing, and using information about a person (Laws of Ukraine “On Information”⁴ and “On Personal Data Protection”⁵), as well as providing for liability for interference with personal (private) life (Criminal Code of Ukraine⁶).

The data on traditional methods, means and modern technologies of covert visual surveillance were noted. Such sources have open methodological and educational literature (Pryhunov *et al.*, 2020; Pryhunov *et al.*, 2022). Data on the tactical and psychological features of such surveillance and its modern technologies were obtained from scientific sources (Dahl, 2022; Zhang, 2022; Hu *et al.*, 2023). The study also used the authors’ own experience of conducting covert visual surveillance, as well as the experience of training police officers – specialists in this type of activity, who have been trained at the National Academy of Internal Affairs since 2007 (Hribov *et al.*, 2018).

¹Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

²Law of Ukraine No. 2135-XII “On Operational and Investigative Activities”. (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.

³Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁴Law of Ukraine No. 2657-XII “On Information”. (1992, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text>

⁵Law of Ukraine No. 2297-VI “On the Protection of Personal Data”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

⁶Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

Court decisions that provide a legal assessment of the actions of public and private entities that conducted visual surveillance, found by keywords in the Unified Register of Court Decisions, were used. Among them are the verdict of the Lutsk City District Court of Volyn Region of 17 December 2019 (case No. 161/19355/19)¹; the verdict of the Hosiivskiy District Court of Kyiv of 20 March 2023 (case No. 752/16495/22)²; the decision of the Odesa Court of Appeal of 18 October 2022 (case No. 522/10679/20)³; the verdict of the Kovel City District Court of Volyn Region of 03 February 2022 (case No. 159/4835/19)⁴; the decision of the Prymorskiy District Court of Odesa of 11 December 2018 (case No. 522/1290/14-k)⁵, etc.

Logic (analysis, synthesis, induction, deduction, analogy, comparison) methods were used to study regulations, materials of criminal proceedings, court cases, analytical materials, concepts, and authors' points of view on certain issues related to the subject matter of the study. Systemic and structural methods were used to systematise theoretical knowledge on the practical conduct of covert visual surveillance, as well as to determine the system of legal norms that should be applied to assess the legality of traditional methods, means and modern technologies of such surveillance.

Comparative legal method was used to conduct a comprehensive analysis of international law, domestic legislation, and bylaws. Historical and legal approaches were used to study the legal regulation of techniques and methods of covert visual surveillance in historical retrospect.

Logical and legal approaches were used to assess the legality of specific actions of observers in the process of covert visual surveillance.

These methods allowed to determine the legitimacy (legitimacy) of the use of specific techniques and means of covert visual surveillance by the police and other actors (journalists, lawyers, security guards, private detectives, etc.).

■ Results

Assessment of the legality of stationary covert visual surveillance

Stationary surveillance is carried out from places called posts, among which there are open and closed ones, as well as permanent temporary ones (Pryhuvnov *et al.*, 2022). An open position is characterised by the fact that the presence of the person conducting the surveillance is obvious. However, the purpose of this presence must be disguised by certain actions (waiting for transport, drinking drinks, waiting in line, repairing a car, etc.).

A closed position is characterised by the fact that surveillance is carried out from closed positions (from an apartment, or a tinted car) so that the object and its connections cannot be seen by the observer. A permanent position involves observers staying there for a long time – from one day to several weeks. It also involves the use of a legend, such as “trade tent”, “repair of communications”, “installation of equipment”, etc.

A temporary position is located situationally due to the object's movement ceasing in a specific location for a certain period. It is used in both open and closed versions. The closed variant involves observation from a certain publicly accessible room, which excludes direct visual contact between the object and the observer.

Thus, posts are positions from which visual observation of a certain publicly accessible place is conducted. Their main characteristics are location in space relative to this place, the period of observation, and the ability of the object and its connections to be seen by observers. Following these characteristics, posts are divided into the following types: “temporary open”, “temporary closed”, “permanent open”, and “permanent closed”.

In legal terms, stationary surveillance using these types of posts is visual surveillance of a place. An analysis of clause 11 of part 1 of Article 8 of the Law of Ukraine “On Operational and Investigative Activities”⁶ and Article 269 of the Criminal Procedure Code (CPC) of Ukraine⁷ suggests that investigators and prosecutors do not need to seek permission from the investigating judge to conduct visual surveillance of a place. They can conduct such surveillance based on their procedural decision, formalised in a resolution. This approach of the legislator is fully justified. After

¹Verdict of the Lutsk City District Court of the Volyn Region No. 161/19355/19. (2019, December). Retrieved from <https://reyestr.court.gov.ua/Review/86405525>.

²Verdict of the Hosiivskiy District Court of Kyiv No. 752/16495/22. (2023). Retrieved from <https://reyestr.court.gov.ua/Review/109661618>.

³Decision of the Odesa Court of Appeal No. 522/10679/20. (2022, October). Retrieved from <https://reyestr.court.gov.ua/Review/107000463>.

⁴Verdict of the Kovel City and District Court of the Volyn region No. 159/4835/19. (2022, February). Retrieved from <https://reyestr.court.gov.ua/Review/102951854>.

⁵The decision of Primorye District Court of Odesa No. 522/1290/14-k. (2018, December). Retrieved from <https://reyestr.court.gov.ua/Review/78738400>.

⁶Law of Ukraine No. 2135-XII “On Operational and Investigative Activities”. (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.

⁷Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2436>.

all, in this case, there is no question of collecting confidential information about a person, no one's rights are restricted or violated, and there is no interference with private communication.

The aforementioned suggests that covert stationary visual surveillance from temporary and permanent, closed, and open stationary posts can be conducted not only by officials specially authorised by law but also by ordinary citizens, including journalists, representatives of detective agencies, lawyers' assistants, etc. At the same time, the law does not prohibit them from legitimising their presence at closed posts by using certain disguises. They cannot be held liable unless it is proved that the surveillance of a particular place was established specifically to obtain confidential information about a particular person.

Therefore, it is worth noting that surveillance of certain territories, buildings, premises, and objects (if conducted in publicly accessible places) is mainly aimed at identifying certain individuals and further studying their actions. From the moment these persons are identified, surveillance is carried out concerning them. Therefore, when an investigator or prosecutor issues an order for visual surveillance of a place or object, there are no formal legal grounds to monitor the persons who will be identified in this way. Thus, this kind of surveillance makes sense only when a person's presence in a certain place or physical contact with a specific object can be evidence of guilt, as well as to detain a suspect (wanted) person (Hribov *et al.*, 2020).

Almost the same applies to stationary surveillance by private law entities. Surveillance conducted by them at a place before a certain person is detected cannot be considered as the collection of confidential information about a person, restriction of his or her rights and freedoms. After all, only persons can be holders of legal rights and parties to legal relations. Objects and places cannot be considered subjects of such relations. Therefore, visual surveillance of them does not require legislative regulation. When such surveillance is carried out in a specific place and involves an identified person (or a person who can be identified), the actions of the observers may be qualified as interference with privacy. In this case, the use of specially selected posts by observers may be one of the proofs of their guilt.

That is, persons who are not authorised by law to conduct covert surveillance may conduct such surveillance at a place until the person of interest appears there. Thereafter, they must act only openly.

Assessment of the legality of mobile covert visual surveillance on a person

Moving surveillance can be differentiated into two types depending on whether the observers have information about the route of movement and/or the location of the object visited or not.

In the first case (anticipatory surveillance), observers can be positioned in advance on the route of movement and in the places where the object is to be visited (zonal or phased-territorial surveillance), which brings this type of surveillance closer to stationary surveillance. They can go to meet the object to record its actions, stay in a certain place, and contact with certain persons; they can move ahead of the object).

In the second case, observers are positioned behind the object or move alongside it. This type of surveillance is called an escort. Since ancient times, its three main methods of conducting it have been "chain", "along parallel streets", and "fork" (Pryhunov *et al.*, 2022).

"Chain" – observation behind the object, where observers form a column and periodically change places to avoid detection.

"Movement along parallel streets" – observation at a certain distance to the right and left of the object to "intercept" the object in case of a change in direction (except for the opposite direction).

"Fork" is a combination of the previous techniques, where the observers move behind and in parallel with the subject.

All techniques are used both when the object is moving on foot and in a car, considering the peculiarities of road traffic. There are also other techniques such as "network", "box", "square", etc., that are also used to locate observers in space relative to the object in motion (Pryhunov *et al.*, 2022).

The use of these techniques does not in any way affect the legal qualification of the actions of observers who, following the provisions of Article 269 of the CPC of Ukraine¹ or paragraph 11 of part 1 of Article 8 of the Law of Ukraine "On Operational and Investigative Activities"², carry out visual surveillance of a person to fulfil the tasks of criminal proceedings or operational and investigative activities.

If observers, using these techniques, collect confidential information about a person without the permission of the investigating judge, this is evidence of a prior conspiracy, i.e., interference with personal life committed by an organised group.

The same qualification applies to group covert visual surveillance of a person by unauthorised persons (journalists, private detectives, security special-

¹Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2436>.

²Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.

ists). In Ukraine, these categories of persons, despite the needs of their professional activities, are deprived of the right to conduct covert surveillance of a person, and even more so to covertly record actions with technical means.

Thus, part 2 of Article 32 of the Constitution of Ukraine¹ provides that it is not allowed to collect, store, use and disseminate confidential information about a person without his or her consent, except in cases determined by law, and only in the interests of national security, economic welfare and human rights. At the same time, part 1 of Article 11 of the Law of Ukraine “On Information”² provides that information about an individual (personal data) is information or a set of information about an individual who is identified or can be specifically identified. The Law of Ukraine “On Personal Data Protection” contains a similar definition (Article 2(10))³. Therefore, moving visual surveillance of a previously identified person is the collection of confidential information about him or her, and therefore may be conducted only in cases provided for by the Law of Ukraine “On Operational and Investigative Activities”⁴ and the CPC of Ukraine⁵.

Concerning journalists conducting investigations using covert methods (including covert visual surveillance), many developed democratic countries have a similar approach (prohibition of covert video recording). At the same time, scholars in these countries argue that this approach makes it impossible for journalists to do their job effectively, and therefore harms the proper functioning of the democratic system, as it prevents the public from obtaining information about undoubtedly socially important facts, such as political corruption or abuse of power (Alegria, 2019).

As for private detective practice, in developed countries, private detective practice is traditional and regulated in detail by law (in particular, in terms of the list of permitted methods and means). This practice is the subject of scientific research aimed at determining the effectiveness and improvement of this type of activity (Button *et al.*, 2022).

In Ukraine, as in other countries of the world, there is an objective need to provide detective services. Such services are in great demand, which leads to active research on both the tactical issues of such activities (Frantzuz & Novitskiy, 2022) and its organisational and legal aspects (Frantzuz & Nosenko, 2022). Several draft laws on private detective activities have been submitted to the Verkhovna Rada of Ukraine based on the results of research by Ukrainian legal scholars (Kyslyi *et al.*, 2020).

At present, private detectives in Ukraine risk being held criminally liable for interference with privacy for conducting visual surveillance of a person. For example, the Lutsk City District Court of Volyn Region in case No. 161/19355/19 (criminal proceedings No. 22018030000000157)⁶ found a representative of a detective agency guilty of committing criminal offences under Part 1 and Part 2 of Article 182 of the Criminal Code of Ukraine⁷. The latter, for mercenary reasons, received and executed an order for visual surveillance of a person and an audio recording of his conversations. On 2023, the Holosiivskyi District Court of Kyiv (case No. 752/16495/22; criminal proceedings No. 22022101110000493)⁸ brought the founder of the campaign, which, among other things, specialises in providing covert visual surveillance services, to criminal liability under Part 2 of Article 359, Part 1 of Article 361-2, Part 2 of Article 361-2 of the Criminal Code of Ukraine⁹. These decisions should be considered legal and reasonable.

Assessment of the legality of mobile covert visual surveillance on an object

Mobile surveillance of an object (car, suitcase, shipping container, etc.), which is conducted using the above techniques, deserves a separate legal assessment. As in the case of surveillance of a place, actions to monitor the movement of an object cannot be qualified as collecting information about a person. Therefore, clause 11 of part 1 of Article 8 of the Law of Ukraine “On Operational and Investigative Activities”¹⁰ and Article 269 of Ukraine¹¹ do not provide

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

²Law of Ukraine No. 2657-XII “On Information”. (1992, October). Retrieved from <http://zakon5.rada.gov.ua/laws/show/2657-12>.

³Law of Ukraine No. 2297-VI “On the Protection of Personal Data”. (2010, June). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2297-17>.

⁴Law of Ukraine No. 2135-XII “On Operational and Investigative Activities”. (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.

⁵Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2436>.

⁶Verdict of the Lutsk City District Court of the Volyn Region No. 161/19355/19. (2019, December). Retrieved from <https://reyestr.court.gov.ua/Review/86405525>.

⁷Criminal Code of Ukraine. (2001, April). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2341-14>.

⁸Verdict of the Holosiivskyi District Court of Kyiv No. 752/16495/22. (2023). Retrieved from <https://reyestr.court.gov.ua/Review/10966161>.

⁹Criminal Code of Ukraine. (2001, April). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2341-14>.

¹⁰Law of Ukraine No. 2135-XII “On Operational and Investigative Activities”. (1992, February). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2135-12>.

¹¹Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2436>.

for the need to obtain a ruling from an investigating judge on permission to monitor an object. After all, surveillance is carried out on an object. Naturally, this object may be the property of a certain person, be in his or her possession, use, etc. However, as long as the surveillance is not of the person, but of the objects belonging, there are no grounds to assert that his or her rights are violated or restricted.

This feature is often used by law enforcement officers who formally establish surveillance of a car (as a object), but in fact, monitor its owner (driver). This approach allows for avoiding several voluminous procedural documents required to go through the procedure for obtaining an investigating judge's permission to conduct visual surveillance (and not to be exposed to a possible refusal to grant permission to conduct surveillance). There are no precedents in Ukrainian court practice to expose this approach of investigators and operatives to creating legal grounds for visual surveillance.

This approach can also be used by representatives of other professions (journalists, private detectives) to justify their actions of visual surveillance of a person. After all, when trying to bring them to criminal liability for interference with private life, they may claim that they were not observing a person, but their belongings. At the same time, according to Part 2 of Article 17 of the CPC of Ukraine¹, it will be enough for the observers to make a statement, and the prosecution will have to refute it with appropriate and admissible evidence.

Thus, in the case where the surveillance was carried out not on the car, but on its driver, the prosecution, to prove the guilt of the observers in interference with private life, will have to at least prove that the latter identified the driver of the vehicle. After all, if a person is not identified, the information is not confidential, and therefore its collection is not prohibited by law.

The absence of signs of interference with privacy in the case of surveillance of a car without identifying its owner, possessor, or user is argued in the decisions of Ukrainian courts. In particular, the Odesa Court of Appeal, by its decision of 18.10.2022 in case No. 522/10679/20², dismissed the claim of K.K. Karas for compensation for non-pecuniary damage caused by the illegal collection, storage, use and dissemination of confidential information about an individual.

The plaintiff's position, in this case, was that during the trial of the criminal proceedings, where he had the status of an accused (under Part 1 of Article

140, Part 3 of Article 358 of the Criminal Code of Ukraine³), the Municipal Institution "Centre for Integrated Video Surveillance and Video Analytics of Odesa Centre 077" provided the victims' lawyers with photo materials regarding the movement of the car belonging to him. The photographs recorded the fact of the plaintiff's movement in the said car together with his wife, showing the time, date, and the car's licence plate. Based on the above, K.K. Karas claimed that he had been subjected to illegal visual surveillance, which resulted in unlawful interference with his privacy and the dissemination of his data.

The Court of Appeal, agreeing with the court of first instance, dismissed the claims. As an argument in favour of this, it was noted that the state registration number of a car is not personal data. After all, this number cannot be used to specifically identify the person driving the car or the person who owns it. Such identification requires additional actions and some time. Personal data means only information by which a person is identified or can be identified. A person cannot be considered identifiable if his or her identification requires an unreasonably large amount of time and effort.

Another argument for dismissing the claim, in this case, was that all the video cameras of the Cenr-077 municipal institution were installed only openly and only in public places, and therefore the plaintiff should be considered to have been informed of the video recording. This is fully consistent with the provision of part 1 of Article 307 of the Civil Code of Ukraine⁴, which provides that a person's consent to video recording is deemed to be given if such recording is openly carried out in public places.

Thus, in the case of covert visual surveillance of a particular car (or other object) during which video recording is carried out, the latter argument will be irrelevant. However, covert visual surveillance of a particular object of the material world (without the use of video recording and photography) cannot be considered illegal in itself. Its illegality can only be stated when it is reliably known that the person who has been using this object for a long time is specifically identified by the observers.

In the aforesaid example, the video recording and photographs of the car at the time of their implementation were not in the plaintiff's circle of attention and, quite possibly, were not realised by him.

The use of these and other means used in the process of organising and conducting covert visual surveillance requires a legal assessment. Such means

¹Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2436>.

²Decision of the Odesa Court of Appeal No. 522/10679/20. (2022, October). Retrieved from <https://reyestr.court.gov.ua/Review/107000463>.

³Criminal Code of Ukraine. (2001, April). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2341-14>.

⁴Decision of the Odesa Court of Appeal No. 522/10679/20. (2022, October). Retrieved from <https://reyestr.court.gov.ua/Review/107000463>.

should be divided into technical and covert visual surveillance means (technical means of covert visual surveillance can also be distinguished as a separate mixed group).

Assessment of the legality of the use of visual surveillance equipment

Technical means of visual surveillance should be divided into four categories: photo and video recording equipment; optical means; radio technical means of monitoring the location of the object; technical means of organising visual surveillance.

As for the means of photo and video recording, it has been substantiated above that covert photography and video recording of a specific (identified) person may be carried out only by an investigator or employees of operational units within the framework of criminal proceedings or an operational investigation case and only based on a decision of an investigating judge. In any other cases, covert recording by technical means of a specific (identified) person, which is a sign of violation of privacy, may entail criminal liability for a crime under Article 182 of the Criminal Code of Ukraine. At the same time, the materials of photographing and video recording of the persons under surveillance seized from illegal observers are used by the prosecution to prove the guilt of the latter, such as in criminal proceedings No. 42017030000000371 (case No. 159/4835/19)¹; No. 42013170110000064 (case No. 522/1290/14-k)²; No. 22018030000000157 (case No. 161/19355/19)³, etc.

As already mentioned, photo and video recording equipment can be used by police officers to perform covert visual surveillance tasks in an open forum. Thus, whenever possible, instead of personally monitoring the object (being at a short distance from it and using mobile surveillance techniques and disguises), law enforcement officers observe it through a network of video cameras openly installed in public places. Video recorders and ordinary mobile phones are often used to photograph and record the actions and contacts of the target. Such recording, being open in form, is hidden in content due to the lack of awareness of the object of surveillance. The covert nature of surveillance is also due to its combination with the use of covert surveillance techniques (methods of accompanying an object in motion, setting up observation posts, and the use of individual and group disguises).

The use of video surveillance systems in public places by law enforcement agencies is not only a means of covert surveillance of a person, object, or place but also a highly effective means of detecting, preventing, solving, and investigating criminal offences. However, today in Ukraine there are no legal grounds for direct and timely access to these systems by law enforcement officers. Of course, within the framework of criminal proceedings, an investigator may obtain information from such systems based on a ruling by an investigating judge on temporary access to objects and documents following the procedure provided for in Chapter 15 of the CPC of Ukraine⁴. However, this means obtaining information about events that have already taken place (“after the fact”), while visual surveillance should be conducted “live”. The issue of police access to surveillance systems is not currently regulated by law.

In addition, most of these systems are installed and maintained by local governments (village, town and city councils) and are municipally owned property. In most cases, these systems operate in conjunction with software that allows for the identification of cars by their licence plates, identification of individuals through face recognition, and timely notification of criminal or criminogenic events. The introduction and operation of video surveillance systems in public places are usually justified by these authorities concerning Article 38 of the Law of Ukraine “On Local Self-Government in Ukraine”⁵. However, even though this provision is entitled “Powers to ensure law and order, protection of rights, freedoms and legitimate interests of citizens”, it does not contain any mention of the use of video surveillance systems and artificial intelligence.

Optical means of covert surveillance include binoculars, spyglasses, monoculars, telescopes, and night vision devices. Such devices are not prohibited for civilian use and can be freely purchased in retail. Their use cannot be considered an offence. However, if such use is carried out covertly, it can be evidence of the collection of confidential information about a person without their consent, especially when combined with other factors: covert photography and video recording, the use of visual surveillance posts and techniques for tracking an object in motion, and the use of camouflage.

¹Verdict of the Kovel City and District Court of the Volyn Region No. 159/4835/19. (2022, February). Retrieved from <https://reyestr.court.gov.ua/Review/102951854>.

²The decision of the Primorsky District Court of Odesa No. 522/1290/14-k. (2018, December). Retrieved from <https://reyestr.court.gov.ua/Review/78738400>.

³Verdict of the Lutsk City District Court of the Volyn Region No. 161/19355/19. (2019, December). Retrieved from <https://reyestr.court.gov.ua/Review/86405525>.

⁴Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2436>.

⁵Law of Ukraine No. 2827-IX “On Local Self-Government in Ukraine”. (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

The same applies to the traditional technical means of organising visual surveillance, namely radio communications and vehicles.

Along with radio communications and motor vehicles, there are technical means of visual surveillance, the use of which is not regulated by domestic law in any area of public life. These are unmanned aerial vehicles. If a video camera is installed on them, they turn into a device that can be used to monitor moving objects and take photos and videos of them. In the EU and the US, active research is underway to ensure the covert use of such devices in law enforcement activities (Huang *et al.*, 2020).

As of 2023, the law does not regulate the issue of certification and accounting (registration) of such devices, training and certification of their operators. The lack of legal regulation in this area can lead not only to legal problems (in terms of implementing information obtained by law enforcement officers from the use of drones), but also to serious consequences related to injuries and deaths, and property damage. After all, the actions of an unqualified operator and/or the use of a technically imperfect aircraft may pose a danger to ordinary citizens. Moreover, the inappropriate use of drones may be associated with criminal offences under Article 281 “Violation of the Rules of Air Flight”¹ or Article 282 “Violation of the Rules of Airspace Use” of the Criminal Code of Ukraine².

Radio-technical means of monitoring the location of an object are widely used by both the police and representatives of the criminal world. The most common type of such devices is radio beacons, which are commonly known as “washers”. They are radio-emitting devices that are covertly installed on a vehicle used by a visual surveillance target (Pryhunov *et al.*, 2022). This is an auxiliary tool that allows, if necessary, to temporarily release the object of surveillance from the field of view, as well as to determine its location in case of loss.

For the legal assessment of the use of such equipment, it is important that the “puck” is used only in conjunction with equipment that determines its location by radio signal. The use of such equipment without the knowledge of the owner of the object on which the radio beacon is installed corresponds to a covert investigative (detective) action, which is defined in Ukrainian legislation as establishing the location of radio equipment (radio-electronic means) and is regulated by Article 268 of the CPC of Ukraine³.

Part two of Article 268 of the CPC of Ukraine⁴ provides that this covert investigative (detective) action is carried out only based on a decision of the investigating judge. However, in the course of visual surveillance of a person already authorised by the court, law enforcement officers usually do not obtain any permits to use radio beacons. This is caused by the fact that the results of this activity are never used as evidence in criminal proceedings. They are only needed to perform certain tasks within the organisation of visual surveillance. Therefore, the use of a “puck” in the process of surveillance of a moving object does not entail violations of its rights by police officers who legally conduct visual surveillance of it.

Moreover, part 5 of Article 268 of the CPC of Ukraine⁵ provides that establishing the location of radio equipment (radio-electronic means) at the request of its owner does not require the permission of the investigating judge. Formally, a radio beacon installed in the course of covert visual surveillance on a target’s car is the property of either an operational unit or a specific operative. Therefore, the location of this beacon can be tracked without the investigating judge’s decision, if there is a corresponding application.

The classification of the location of radio equipment (radio-electronic means) as covert investigative (detective) actions conducted based on a ruling of an investigating judge gives grounds to assert that civilians (subjects of private law) cannot use it in everyday life and their professional activities (journalistic, detective, security). At the same time, the use of the relevant equipment cannot be qualified as the collection of confidential information about a person, and, accordingly, as an interference with private life as such equipment only provides information about the location of the object with the radio beacon.

A different legal assessment is required in cases where to facilitate the process of visual surveillance, its organisers gain unauthorised access to the target’s mobile phone and install applications on the device that allow them to track the target’s movements without the target’s knowledge. These can be ordinary child monitoring apps that are openly distributed on the Internet or specially designed spyware.

The mere fact of installing such an application on a mobile phone without the knowledge of its owner (for example, by gaining temporary physical access to such a device) constitutes a criminal offence under Article 361 of the Criminal Code of Ukraine⁶ – unauthorised interference with the operation of

¹Criminal Code of Ukraine. (2001, April). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2341-14>.

²*Ibidem*, 2001.

³Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#n2436>.

⁴*Ibidem*, 2012.

⁵*Ibidem*, 2012.

⁶Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

information (automated), electronic communication, information and communication systems, and electronic communication networks.

Vehicles and other transport, as well as radio communications, are technical means of visual surveillance. Their use (including covert use) by law enforcement agencies is entirely legal, as it is based on the relevant legal provisions. As for private individuals, their use of radio communications (as opposed to vehicles) without the permits required by the Law of Ukraine “On Electronic Communications”¹ and the relevant bylaws will be illegal. However, it should be noted that today the so-called detective agencies successfully use voice chats in Internet messengers to covertly communicate with each other.

Assessment of the legality of the use of covert visual surveillance equipment

As for the means of ensuring the secrecy of visual surveillance, in a broad sense, they should include tactical techniques and role behaviour of observers, as well as material means of disguise. All this is used as a single system.

Scholars and practitioners from EU countries aptly use the term “Chameleonicisation” to describe this system, which is derived from the noun “chameleon”. Their research includes recommendations on the anatomical features, gait, posture, behaviour, and clothing of observers, their position in space concerning the object and other persons and objects around them, changes in appearance and adaptation to the environment, the appearance of surveillance vehicles, etc. These recommendations are based on an in-depth study of the practice of covert visual surveillance by the Norwegian police and are scientifically sound from the perspective of social psychology.

These guidelines are so natural that the rules and techniques described in them are also traditional practices for Ukrainian police officers specialising in visual surveillance. These rules and techniques are informal (unwritten) and are passed down from generation to generation, from mentors to trainees.

Police observers should not stand out in the environment (they should “blend in”). The subject of observation may not notice the police officer several times if the officer looks neutral, appropriate to the situation, the way most people in the area look. The observer needs to change clothes, accessories, gait, posture, and hairstyle over time. After all, the target can remain unnoticed for a limited number of times. Observers should choose a distance to the object that is close to other people: maximum on deserted streets, minimum in crowded places (markets, public

events, train stations, airports, etc.). At a public transport stop, the observer should be located on the side of the object in which the expected transport is expected to move, so that looking in the direction from which it is expected to approach (as well as all passengers), they can keep the object of observation in sight (Dahl, 2022).

The colour of clothes plays an important role in chameleonicisation. Bright, saturated colours mostly attract involuntary attention. Therefore, you should not use such colours when accompanying an object. It is also advisable to avoid irritating combinations of tones: orange with dark blue, red with green, purple with yellow, and not to wear shiny and bright objects. Therefore, it is inappropriate for observers to wear expensive jewellery and other flashy decorations when accompanying the target.

At the same time, if close contact with an object is required, it is good to use brightly coloured clothes and eye-catching items. After all, they distract attention and are the most memorable. Therefore, the observed person, suspecting that the employee who approached the subject followed will try to identify these signs in the future. After contact with the target, the observer changes clothes to another (inconspicuous) one and continues to follow, keeping a safe distance for some time.

The chameleonicisation of observers should be combined with the camouflage of vehicles, for which purpose the replacement of number plates, removable luggage racks, additional and fog lights, lanterns and conventional signs (taxi, disabled, doctor, student) is used, means for applying various signs to the glass and car body, wheel covers of various configurations, air intakes, sun visors, steering wheel braiding, seat covers, headrests, curtains and other interior car equipment (Dahl, 2022)

As already mentioned, these means are called “chameleonicisation” by Western European authors; in the domestic tradition, they are called means of disguise.

The use of these rules and techniques is the subject of psychological science. Their assessment from the standpoint of legality is possible only in conjunction with the main signs of the legality of visual surveillance: conducting by a proper subject, and availability of appropriate official procedural decisions and permits.

If such means were used without appropriate procedures and (or) by improper entities to conduct covert visual surveillance of a person to collect confidential information, such surveillance should be considered unlawful, as well as any methods and means used to achieve its goals.

¹Law of Ukraine No. 1089-IX “On Electronic Communications”. (2020, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1089-20#Text>.

■ Discussion

An analysis of recent publications in the chosen area of research shows that the attention of scholars is mainly focused on the use of surveillance by law enforcement agencies that is either non-visual or not covert.

Thus, the legal problems of using surveillance are mostly studied in the context of covert police interference in personal life through the control of electronic communications. In particular, D. Murray & P. Fussey (2019), investigated the issue of human rights observance during mass surveillance of such communications by the police. The scholars reasonably conclude that this type of law enforcement activity can only be used to detect and investigate serious and especially serious crimes and should be regulated in detail. A. Abdelhameed (2019) emphasises the need to balance the rights of a suspect or accused in criminal proceedings with the broad possibilities of law enforcement agencies to secretly monitor him/her with the help of modern technologies of interference with private communication. L.M. Bujosa Vadell *et al.* (2021) studied the issues of evaluation and admissibility of evidence obtained as a result of such covert surveillance. A. Atul & K. Tushar (2022) focused on the use of special intelligence programmes to gain access to electronic information systems (including mass and extraterritorial). The researchers emphasise the need to introduce an effective legal mechanism to prevent the arbitrary use of covert cyber surveillance by law enforcement agencies.

The difference between this study and the aforementioned ones is that it deals with the issue of compliance with the legality of visual (physical) surveillance at the level of specific actions of observers. Modern scholars are actively studying the legal problems of open surveillance through networks of video cameras installed in public places with the simultaneous use of artificial intelligence (Bragias *et al.*, 2021; Galic & Gellert, 2021; Montasari, 2023). Research in this area aims to clarify the effectiveness and legitimacy of this approach both in general (Circo & McGarrell, 2021; Jung & Wheeler, 2023) and in certain areas of crime fighting. In particular, this applies to the detection and disclosure of criminal offences related to the illegal possession and use of cold steel and firearms (Abdallah *et al.*, 2023; Boukabous & Azizi, 2023). In addition, the use of video camera networks and the application of artificial intelligence to detect and investigate robberies (de Paula *et al.*, 2022) and other illegal acts committed with the use of physical violence (Vosta & Yow, 2022) are being investigated.

In contrast to these studies, this study focuses on covert surveillance (if video recording and photography are used, this also occurs exclusively covertly). Among other the conditions and circumstances the covert use of special technical means for surveillance and video cameras will be permissible (lawful) were

determined. In addition, the issue of the legality of the use of covert means (disguise, operational cover) is also covered.

Only a few studies were devoted to the issues of direct (physical) covert surveillance of a person, object or place by law enforcement officers. Thus, P.Ya. Pryhunov *et al.* (2022) published a training manual, which focused not on detection, but on conducting covert visual surveillance. They outlined in detail the issues of organising mobile and stationary covert visual surveillance (with a detailed description of its tactical techniques, technical means used, and ways to ensure its secrecy). The study of J.Y. Dahl (2022) describes in detail the tactical and psychological features of covert visual surveillance used in the practical activities of the Norwegian police, and B. Loftus (2019), among other things, examined the issue of legal regulation of such surveillance. The analysis of these studies suggests that their authors did not set out to provide a legal assessment of the use of specific techniques and means of covert visual surveillance.

A retrospective analysis of the use of visual surveillance (Chisnikov *et al.*, 2009), analysis of the modern foreign experience of its conduct (Zhang, 2022), and reflection of its content in the methodological scientific literature give grounds to assert that in practice, such types of surveillance as moving (for objects in motion) and stationary (for immovable objects or moving objects in certain areas of the terrain) have always been distinguished and are still distinguished. It is this classification that has become the basis for identifying specific methods of covert visual surveillance and providing a legal assessment of the legality of their use (Horbachova, 2005; Pryhunov *et al.*, 2020; Pryhunov *et al.*, 2022). In addition, an important element for such an assessment is the use of modern technologies and technical means for surveillance.

Currently, there is an intensification of research into the tactical and technical issues of providing covert video surveillance using unmanned aerial vehicles for various purposes (Savkin & Huang 2020; Zhang, 2022; Hu *et al.*, 2023). Researchers consider individual cars and single pedestrians as such targets (Huang *et al.*, 2020). Of course, the results of these studies can also be used in law enforcement, in particular, to conduct covert surveillance of a person, object or place. However, their implementation in police practice also requires a preliminary determination of the conditions for ensuring the legality of the use of unmanned aerial vehicles for covert surveillance of a person.

Thus, the criteria for the admissibility (legality) of using specific traditional techniques, means, as well as modern technologies of covert, direct (physical) visual surveillance, which, among other things, can be carried out with the use of special technical means, were developed in detail. The results obtained

will be useful for law enforcement and intelligence officers, as well as representatives of other professions, to ensure the legality of covert visual surveillance, and prevent unjustified restriction or violation of human rights and fundamental freedoms.

■ Conclusions

This study provides a legal assessment of the techniques, methods and means used during covert visual surveillance, which fully fulfilled the purpose. For the legal assessment of the legality of the use of traditional techniques and means of covert visual surveillance, its natural division into stationary and mobile surveillance is important.

Stationary surveillance is carried out at a certain place or for a person who is in such a place (or is to appear there). Its traditional methods are limited to the selection by observers of certain positions for observation - posts (randomly selected or prepared in advance; open or closed, permanent or temporary; with or without the use of disguises). The organisation of such posts and the conduct of surveillance of a particular place from them can be legitimately carried out both by entities authorised to carry out pre-trial investigation and operational search activities and by any private law entities (private detectives, investigators, lawyers' assistants, ordinary citizens). The only restriction for the latter is that they cannot take covert photos and record videos of persons who are (appear) in such a place.

The use of techniques of moving covert surveillance of a person, in particular, escort ("chain",

"double chain", "fork", "parallel lines") and advance ("stage-zonal", "leading") will be legal only if it is carried out by an investigator or employees of operational units of law enforcement agencies based on a decision of an investigating judge. The use by these entities of the above techniques for surveillance of a moving object will be lawful if they issue a relevant resolution within the framework of an operational investigation case or criminal proceedings. If the above techniques are used by private law entities to monitor an object (car, suitcase, container), their actions are lawful (unless it is proved that the thing was monitored and the persons conducting operations with it were not identified by the observers based on their possession of such a thing).

The assessment of the legality of the use of certain technical means and means of ensuring covert visual surveillance is possible only in conjunction with the main signs of the legality of visual surveillance: conducting it by the proper entity, and availability of relevant official procedural decisions and permits.

Prospects for further scientific research are seen in the formulation of proposals for the legal regulation of the use of unmanned aerial vehicles and for solving the problems of using covert visual surveillance of a person, object, or place.

■ Acknowledgements

None.

■ Conflict of Interest

None.

■ References

- [1] Abdallah, R., Benbernou, S., Taher, Y., Younas, M., & Haque, R. (2023). A smart video surveillance system for Helping law enforcement agencies in Detecting knife related crimes. In *3rd international conference on deep learning, big data and blockchain* (pp. 65-78). [doi: 10.1007/978-3-031-16035-6_6](https://doi.org/10.1007/978-3-031-16035-6_6).
- [2] Abdelhameed, A. (2019). Modern means of evidence collection and their effects on the accused privacy: The US law. *Journal of Politics and Law*, 12(1), 85-97. [doi: 10.5539/jpl.v12n1p85](https://doi.org/10.5539/jpl.v12n1p85).
- [3] Alegria, A.M. (2019). The use of the hidden camera in the investigative journalism: A certainty and a conundrum. *Revista De Derecho Politico*, 1(104), 87-116. [doi: 10.5944/rdp.104.2019.24310](https://doi.org/10.5944/rdp.104.2019.24310).
- [4] Atul, A., & Tushar, K. (2022). Pegasus project: Re-questioning the legality of the cyber-surveillance mechanism. *Laws*, 11(6), article number 85. [doi: 10.3390/laws11060085](https://doi.org/10.3390/laws11060085).
- [5] Boukabous, M., & Azizi, M. (2023). Image and video-based crime prediction using object detection and deep learning. *Bulletin of Electrical Engineering and Informatics*, 12(3), 1630-1638. [doi: 10.11591/eei.v12i3.5157](https://doi.org/10.11591/eei.v12i3.5157).
- [6] Bragias, A., Hine, K., & Fleet, R. (2021). "Only in our best interest, right?" Public perceptions of police use of facial recognition technology. *Police Practice and Research*, 22(6), 6137-1654. [doi: 10.1080/15614263.2021.1942873](https://doi.org/10.1080/15614263.2021.1942873).
- [7] Bujosa Vadell, L.M., Bustamante Rúa, M.M., & Toro Garzón, L.O. (2021). Digital evidence resulting from secret surveillance: Obtaining, admissibility and assessment in criminal proceedings in Spain and Colombia. *Brazilian Journal of Criminal Procedure Law*, 7(2), article number 1347. [doi: 10.22197/rbdpp.v7i2.482](https://doi.org/10.22197/rbdpp.v7i2.482).
- [8] Button, M., Kapend, R., & Stiernstedt, P. (2023) Investigative private policing beyond the police: An exploratory study. *Policing and Society*, 33(2), 150-169. [doi: 10.1080/10439463.2022.2071894](https://doi.org/10.1080/10439463.2022.2071894).
- [9] Chisnikov, V.M., Protsenko, T.O., & Laptsev, S.H. (2009). *External observation: History and modernity*. In O.N. Yarmysh (Eds.). Kyiv: Lesia.

- [10] Dahl, J. (2022). Chameleonizing: A microsociological study of covert physical surveillance. *European Journal of Criminology*, 19(2), 220-236. doi: [10.1177/1477370819896204](https://doi.org/10.1177/1477370819896204).
- [11] De Paula, D.D., Salvadeo, D.H.P., & De Araujo, D.M.N. (2022). CamNuvem: A robbery dataset for video anomaly detection. *Sensors*, 22(24), article number 10016. doi: [10.3390/s222410016](https://doi.org/10.3390/s222410016).
- [12] Frantzuz, A.Y., & Nosenko, B.O. (2022). Cooperation of subjects of private detective (research) activities with units of the national police. *Legal Bulletin*, 67-72. doi: [10.31732/2708-339X-2022-06-67-72](https://doi.org/10.31732/2708-339X-2022-06-67-72).
- [13] Frantzuz, A.Y., & Novitskyi, V.Yu. (2022). A person as a source of information for a private detective. *Legal Bulletin*, 6, 60-66. doi: [10.31732/2708-339X-2022-06-60-66](https://doi.org/10.31732/2708-339X-2022-06-60-66).
- [14] Fussey, P., & Sandhu, A. (2022). Surveillance arbitration in the era of digital policing. *Theoretical Criminology*, 26(1), 3-22. doi: [10.1177/1362480620967020](https://doi.org/10.1177/1362480620967020).
- [15] Galic, M., & Gellert, R. (2021). Data protection law beyond identifiability? Atmospheric profiles, nudging and the Stratumseind living lab. *Computer Law & Security Review*, 40, article number 105486. doi: [10.1016/j.clsr.2020.105486](https://doi.org/10.1016/j.clsr.2020.105486).
- [16] Horbachova, N.H. (2005). *Educational program of the discipline "Organization of surveillance in security activities" (for bachelors of the specialty "Physical education" specialization "Security activities")*. Kyiv: MAUP.
- [17] Hribov, M., Shevchenko, T., & Petinov, Ya. (2018). Methodology of teaching specialized subjects to future operation officers of law enforcement agencies. *Science and Education*, 4, 144-153. doi: [10.24195/2414-4665-2018-4-20](https://doi.org/10.24195/2414-4665-2018-4-20).
- [18] Hribov, M., Yemets, O., & Rusnak, D. (2020). Visual surveillance of a person, thing or place as a means of countering human trafficking. *Scientific Bulletin of the National Academy of Internal Affairs*, 116(3), 8-21. doi: [10.33270/01201163.8](https://doi.org/10.33270/01201163.8).
- [19] Hu, S., Yuan, X., Ni, W., Wang, X., & Jamalipour, A. (2023). *Visual camouflage and online trajectory planning for unmanned aerial vehicle-based disguised video surveillance: Recent advances and a case study*. Singapore: Institute of Electrical and Electronics Engineers. doi: [10.1109/MVT.2023.3263329](https://doi.org/10.1109/MVT.2023.3263329).
- [20] Huang, H., Savkin, A.V., & Ni, W. (2020). A method for covert video surveillance of a car or a pedestrian by an autonomous aerial drone via trajectory planning. In *6th international conference on control, automation and robotics (ICCAR)* (pp. 446-449). Singapore: Institute of Electrical and Electronics Engineers. doi: [10.1109/ICCAR49639.2020.9108036](https://doi.org/10.1109/ICCAR49639.2020.9108036).
- [21] Kyslyi, A., Pysmenna, K., Kolomoiets, M., Volobuieva, O., & Davydenko, V. (2020). *Educational processes of training, retraining and advanced training of private detectives in Ukraine*. *Political Issues*, 38(66), 421-435.
- [22] Loftus, B. (2019). Normalizing covert surveillance: The subterranean world of policing. *The British Journal of Sociology*, 70(5), 2070-2091. doi: [10.1111/1468-4446.12651](https://doi.org/10.1111/1468-4446.12651).
- [23] Montasari, R. (2023). The application of big data predictive analytics and surveillance technologies in the field of policing. In *Countering cyberterrorism* (pp. 81-114). Heidelberg: Springer. doi: [10.1007/978-3-031-21920-7_5](https://doi.org/10.1007/978-3-031-21920-7_5).
- [24] Murray, D., & Fussey, P. (2019). Bulk surveillance in the digital age: Rethinking the human rights law approach to bulk monitoring of communications data. *Israel Law Review*, 52(1), 31-60. doi: [10.1017/S0021223718000304](https://doi.org/10.1017/S0021223718000304).
- [25] Pryhunov, P.Ya., Tronko, O.V., & Hrinin, S.V. (2022). *Visual detection of possible surveillance by law enforcement officers in the course of professional activity*. Kyiv: Alerta.
- [26] Pryhunov, P.Ya., Tronko, O.V., Sekunov, S.V., & Hrinin, S.V. (2020). *Visual detection by law enforcement officers in the process of professional activity of possible surveillance of them by criminal structures or individual criminal elements*. Kyiv: Interdepartmental Research Center for Combating Organized Crime under the National Security and Defense Council of Ukraine.
- [27] Savkin, A.V., & Huang, H. (2020). Bioinspired bearing only motion camouflage UAV guidance for covert video surveillance of a moving target. *Institute of Electrical and Electronics Engineers Systems Journal*, 15(4), 5379-5382. doi: [10.1109/JSYST.2020.3028577](https://doi.org/10.1109/JSYST.2020.3028577).
- [28] Vavoula, N. (2023). (Covert) surveillance of foreign terrorism fighters via the Schengen information system (SIS): Towards maximum operationalisation of alerts and an enhanced role for Europol. *New Journal of European Criminal Law*, 14(2), 206-230. doi: [10.1177/20322844231178927](https://doi.org/10.1177/20322844231178927).
- [29] Vitis, L. (2023). Surveillant assemblage: Overt, covert, movement and social surveillance in domestic and family violence in Singapore. *Women's Studies International Forum*, 96, article number 102664. doi: [10.1016/j.wsif.2022.102664](https://doi.org/10.1016/j.wsif.2022.102664).
- [30] Vosta, S., & Yow, K.-C. (2022). A CNN-RNN combined structure for real-world violence detection in surveillance cameras. *Applied Sciences*, 12(3), article number 1021. doi: [10.3390/app12031021](https://doi.org/10.3390/app12031021).

- [31] Zhang, J. (2022). A covert surveillance strategy for a solar-powered UAV over suspicious mobile target. In *14th international conference on computer and automation engineering* (pp. 8-12). Brisbane: Institute of Electrical and Electronics Engineers. doi: [10.1109/ICCAE55086.2022.9762450](https://doi.org/10.1109/ICCAE55086.2022.9762450).

Законність традиційних прийомів, засобів і сучасних технологій візуального спостереження

Сергій Чернявський

Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-2711-3828>

Андрій Вознюк

Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-3352-5626>

Михайло Грібов

Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0003-2437-5598>

■ **Анотація.** З позиції правоохоронних органів і представників інших професій приховане візуальне спостереження може бути дієвим і необхідним інструментом для виконання таких завдань, як розслідування злочинів, боротьба з тероризмом, нагляд за підозрілими особами або групами. Актуальність прихованого візуального спостереження залежить від контексту й ситуації. Мета цієї статті – юридично оцінити усталені прийоми та сучасні методи проведення прихованого візуального спостереження, а також засобів, використовуваних для виконання його завдань. У дослідженні використано порівняльно-правовий, історико-правовий, логіко-юридичний методи, системно-структурний аналіз, а також методи логіки (аналіз, синтез, індукцію, дедукцію, аналогію, порівняння та узагальнення). Виокремлення конкретних прийомів і засобів прихованого візуального спостереження дало змогу сформулювати юридичну оцінку застосуванню кожного з них у різних умовах та різними суб'єктами. За результатами здійснених досліджень надано юридичну характеристику різним видам спостереження, серед яких конкретні прийоми розміщення спостерігачів у просторі щодо різних об'єктів: рухомих і нерухомих; осіб, речей та певних місць. Надано оцінку правомірності застосування технічних засобів, які використовують під час спостереження, а також засобів забезпечення його негласності. Визначено умови правомірності застосування конкретних груп прийомів і засобів для проведення візуального спостереження різними суб'єктами. Аргументовано, що застосування суб'єктами приватного права прийомів рухомого спостереження за ідентифікованою ними особою є протиправним і буде свідчити про незаконне збирання конфіденційної інформації про неї, вчинене за попередньою змовою групою осіб. Практична цінність роботи полягає в можливості безпосереднього використання її результатів представниками правоохоронних органів та інших професій для обрання ними допустимих (законних) прийомів і засобів проведення прихованого візуального спостереження та уникнення застосування недопустимих (протиправних)

■ **Ключові слова:** правоохоронні органи; слідчий; оперативні підрозділи; технічні засоби; правомірне застосування; права людини; приховане стеження