БОРОТЬБА ЗІ ЗЛОЧИННІСТЮ: ПРАВОВЕ ТА ОРГАНІЗАЦІЙНЕ ЗАБЕЗПЕЧЕННЯ

Chaplynskyi K. O.
doctor of legal sciences, professor
(the Dnipropetrovs'k State University of Internal Affairs)

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ACTUAL PROBLEMS OF CONDUCTING EXAMINATIOIN

Чаплинський К.О. Актуальні проблеми проведення освідування. Наукова стаття присвячена висвітленню актуальних проблем проведення освідування. Автором проаналізовані наявні у юридичній літературі точки зору щодо застосування примусових заходів під час освідування підозрюваних, обвинувачених, свідків і потерпілих.

Ключові слова: *освідування, тактичне забезпечення, тактика, тактичні прийоми, примус*.

Statement of the problem. A special place among all investigative actions, which are aimed at gathering information from the traces of the representations, takes the examination. Examination is a common investigative action, which allows the investigator to directly perceive objects in order to detect traces of a criminal offence and investigate relevant to the criminal proceedings, to have an idea about the mechanism of the crime and the offender, to nominate investigative versions and to identify areas for investigation. The timeliness of assessment in many cases, success in the investigation of criminal offences. Questioning employees of the investigative units shows that 32 % - indicate the need for improvement tactics survey, 87 % of clarification and formalization of some of its provisions.

Analysis of publications which discuss the solution to this problem. The significant contribution to the development of scientific basis of the assessment made known scientists, criminologists and scientists, in particular, V. Bahin, R. Belkin, I. Bykhovskyi, G. Gramovich, S. Efymechev, V. Kolmakov, V. Konovalova, V. Kuzmichev, N. Kulagin, E. Lukjanchikov, V. Popov, M. Saltewski, S. Stakhivskiy, V. Tertyshnyk, Y. Torbin, Y. Fedorov, V. Shepitko, I. Yakimov, V. Shepitko, I. Yablokov and others. The importance of research and doubtless very great, because this investigative action are widely used in law enforcement practice and is a common way of gathering evidence. However, a

more detailed lighting require issues of duress during the survey, with regard to the modern conditions of the present.

So, the **purpose** of this article is to highlight the problematic issues of duress during the survey, taking into account the modern needs of law enforcement practices.

Basic content. Examination is a special kind of investigative inspection. During the research can be found various traces of the criminal offence, which can be crucial in the case. In article 241 of the code of criminal procedure States: when necessary to identify or confirm the presence of the suspect, victim or witness traces of a criminal offence or take special investigator carries out the examination, if it is not necessary to conduct a forensic medical examination.

The actual basis for assessment is the availability of sufficient data to believe that the human body is a special signs or traces of a criminal offence, the identification of which has implications for the establishment of truth in criminal proceedings. Legal - the decision of the Prosecutor.

Therefore, in our opinion, under oswan should be understood independent investigative activity conducted on the basis of the resolution of the Prosecutor and is examining the body of a living person in order to identify and commit the presence or absence of specific signs and traces of the criminal offence and other characteristics and properties of importance for criminal proceedings. Unlike other types of investigative inspection, examination violates the right to privacy and personal freedom of citizens associated with disclosure of intimate circumstances of their lives. Despite this, the legislature has allocated examination in independent investigative action and identified the special rules for its conduct.

In General, the examination of objects include: - a suspect in the body which can be special signs (e.g., tattoos, moles, birthmarks, scars, scars, signs of a struggle, left the victim, injuries and other signs; - the victim, the body of which may be different injury, bodily injury and evidence - blood, semen and other secretions of the person; witness, on the body which can be traces that are related to the criminal event.

Currently one of the most acute problems related to those person is the issue of admissibility of duress, and primarily in the form of physical action, its limits and grounds for participants who refuse it. Despite the urgency of this problem, its elaboration level cannot be regarded as sufficient. Some authors allow such a possibility [1, p. 32; 2, p. 25], the latter exclude her [3, p. 184], while others recognize it as a discussion [4, p. 160].

In our opinion, is not solved is the question of the possibility of using measures of physical exposure to ensure examination in these participants, especially victims and witnesses. Despite this, the question of the admissibility of physical or mental pressure to overcome the resistance of the witness and victim to the implementation of any lawful direction, expressed in the decision to conduct appropriate investigations, requires theoretical and legislative solutions.

So, V. Marinov indicates the possibility of forced examination of suspects, if their body can detect the traces of the crime or special signs. The author notes that

the collected evidence, the accused or the suspect to a certain extent exposed to the crime and shows clear interest in concealing the traces of crimes that are on the body. In addition, to deprive the investigator the opportunity to show these traces, protecting the sense of shame the accused is to make impossible the truth on many criminal cases[5,p.72].

Boridko O., Parasochkina C. and G. Ponomarenko indicate that for the establishment of special signs or evidence of a crime it is necessary to examine parts of the body that are covered, the investigator offers to undress completely or remove certain items of clothing. In case of refusal person to perform these actions, the investigator with the assistance of the investigating authority conducting the examination forcibly[6,p.50].

M. Mikheenko, V. Nor and V. Chibiko note that the examination of suspects can be held both in the voluntary and the involuntary. Examination of the victim and the witness will be made with their consent. But then the authors deny himself, pointing out that as an exception, the victim can force, but only when the suspect says the petition, defending himself against charges of violent crimes, nominated by the victim. The witness may be subjected to the examination and to ensure that he witnessed the crime [7, p.254].

In procedural literature contains proposals on the strengthening of guarantees of the validity of forced examination of victims and witnesses. To this end, the researchers propose to include in the law enforcement examination with the approval of the Prosecutor [8, p. 63-64].

S. Stashivskiy agrees with scholars who believe that the examination by the decision of the investigative body may be held involuntarily. This applies to all persons (including the victim). The investigator about the examination made in accordance with the requirements of the criminal procedure law, is binding on all persons, including witnesses and victims. Moreover, the task of the investigator is to establish the truth, and the witnesses or victims are not always interested in this, so their refusal to be examined can be understood as a latent opposition to [9, p. 32].

M. Strogovich notes that victims and witnesses may not be subjected to examination against their will, stressing that the establishment of the truth in the matter must not violate the legitimate rights and interests of citizens [10, p. 126].

I. Antonov adds that certification, which combined with forced exposure of body parts victim and witnesses (especially in cases of sexual offences) is not valid in all cases [4, p.167].

Noteworthy is the suggestion of some authors regarding the mandatory presence of a physician during the compulsory examination. Its tasks should include oversight to ensure that the survey was not applied measures of the physical effects that are hazardous to health [11, p. 86]. The presence of witnesses in this case should be mandatory, and not at the discretion of the investigator if necessary. All this should be reflected in the minutes of the examination [9, p. 32].

Conducted a survey of members of the investigative divisions allows us to come to the conclusion that of the 237 respondents investigators only 12 were invited witnesses, others use provided by law and are not invited witnesses.

S. Safronov indicates that when the decision on the examination in the presence of witnesses, consider the possible shyness persons, owing to what may occur a conflict situation [12, p. 14].

Based on the research, I. Antonov came to the conclusion that the refusal of forced examination shall not be significant harm to the principle of publicity of criminal proceedings and that, to some extent, corresponds to the moral and legal criteria of criminal procedure activity [4, p. 165].

Questioning employees of the investigative units in the conditions, allows us to come to the conclusion that over time the number of people who deliberately evade assessment increase significantly, in particular: 87 % - suspects, and 21 % of the victims, 9 % - witnesses. Despite this, we support the view of scientists who point to the possibility and expediency examination of suspects, victims and witnesses. This will allow us to detect traces of a criminal offence, to prevent the destruction of evidence, to bind individuals to the criminal event.

In addition, in the scientific literature there is a view that for disobedience of a witness (the victim) the decision of the investigator on examination it is necessary to establish administrative responsibility. With this decision the question of compulsion is not brought up to the degree of physical violence against a person. However, the administrative penalty is violence, because it is executed forcibly. However, it does not involve actions that seem to be the victim or witness is offensive and to avoid which he agrees to be punished. This opinion is supported by other scientists, noting that such an event is a type of mental influence on the personality, a sort of mental compulsion. In addition, as the investigator, after the imposition of an administrative penalty, the witness, the victim will again refuse to conduct this investigation? The threat of an administrative penalty causes fear humiliate a person makes to act against their will is considered as violence. In response it can cause or passive behavior of a person, whose will is suppressed, or active resistance [5, p. 74].

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Чаплинский К.А. Актуальные проблемы применения принуждения при проведении освидетельствования. Научная статья посвящена рассмотрению актуальных проблем проведения освидетельствования. Автором проанализировано имеющиеся в юридической литературе мнения, касающиеся применения принудительных мер при освидетельствовании подозреваемых, обвиняемых, свидетелей и потерпевших.

Ключевые слова: *освидетельствование, тактическое обеспечение, тактика, тактические приемы, принуждение.*

Chaplynskyi K. O. Actual problems of conducting examinatioin. This scientific article deals with consideration of actual problems of carrying out of an examination. The author have analysed the opinions available in the legal literature about aplication of the compalsory methods at examination carrying out of suspects, witnesses and victims.

Keywords: *examination, tactical support, tactis, tactical methods, compulsion.*

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Бабанін С. В.
кандидат юридичних наук, доцент
(Дніпропетровський державний університет внутрішніх справ)

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ЗМІШАНА ФОРМА ВИНИ У КРИМІНАЛЬНОМУ ПРАВІ УКРАЇНИ

Визначено сучасний стан наукової розробки такого інституту кримінального права як змішана форма вини. Надано короткий аналіз досліджень з цієї проблематики як вітчизняних, так і зарубіжних авторів. Наведено авторську позицію щодо змісту змішаної форми вини у кримінальному праві України.

Ключові слова: *суб'єктивна сторона злочину, змішана форма вини, умисел, необережність.*

Постановка проблеми. Кримінальне законодавство України визначає вину як психічне ставлення особи до вчинюваної дії чи бездіяльності, передбаченої КК України, та її наслідків, виражене у формі умислу або необереж-