

## **БОРОТЬБА ЗІ ЗЛОЧИННІСТЮ: ПРАВОВЕ ТА ОРГАНІЗАЦІЙНЕ ЗАБЕЗПЕЧЕННЯ**

**Chaplynskyi K. O.**

doctor of legal sciences, professor  
*(the Dnipropetrovs'k State  
University of Internal Affairs)*

УДК 343.98

### **EXAMINATION AS AN OBJECT OF CRIMINALISTICS RESEARCH**

**Чплинський К. О.** Освідування як предмет криміналістичного дослідження. Досліджено актуальні проблемні питання освідування під час проведення досудового розслідування. Розглянуто наукові підходи щодо поняття та сутності освідування.

**Ключові слова:** *освідування, тактика, тактичне забезпечення, слідчі дії.*

**Statement of the problem.** A special place among all investigative actions, which are aimed at gathering information from the material of the representations, takes the examination. The value of this investigations is extremely high. The examination allows the investigator to directly perceive objects in order to detect traces of the crime, special features and investigate relevant to the criminal proceedings, to have an idea about the mechanism of the crime and the offender, to nominate investigative version and to guide the investigation.

The timeliness and quality of carrying out such investigations as examination in many cases, success in the investigation of crimes. When conducting pre-trial investigation examination is a common investigative action, as evidenced by the study of criminal proceedings. So, when investigating intentional grievous bodily harm assessment was conducted in 78.4% of cases [1, p. 10], when checking an alibi 2.8% [2, p. 104].

Questioning employees of the investigative units shows that 32 % - indicate the need for improvement tactics survey, 87 % of clarification and formalization of some of it provisions. Specified requires the improvement of the criminal procedure regulation and development of tactical security certification in accordance with modern scientific thought and the needs of the investigative practices.

**The analysis of publications which discuss the solution to this problem.** A common tactic of the examination, its procedural regulations fairly widely covered

by academic criminologists and processually in forensic literature. In particular, a significant contribution to the development of scientific basis of the assessment made known scientists, criminalists and scientists, in particular, I.S. Andreev, G.I. Gramovich, V.I. Gromov, L.M. Loboiko, E.D. Lukjanchikov, M.M. Mikheenko, V.T. Nor, M.I. Porubov, I.L. Petrukhin, M.S., Strogovich, S.M. Stahivs'kiy, V.M. Tertyshnyk, Y.G. Torbin, N.V. Terziev, S.A. Sheifer, V.P. Shybiko 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 the procedural regulation and tactical security certification with regard to the modern conditions of the present.

So, the **purpose** of this article is to highlight the problematic issues of assessment, the study of the concepts and entities.

**Basic content.** The term «examination» in the legal literature is used for a long time. To date, however, no argument about the procedural essence of this investigation, its objectives and tactical frameworks for [3, p. 30].

In 20-ies of the last century, scientists under examination understood the work of a doctor or specialist in the field of medicine, which perform the task of the investigator in cases when specific research questions requires special knowledge [4, p. 194].

In the 90-ies of the last and beginning of the 21st century, the overwhelming majority of scientists, in particular, G.I. Gramovich, M.I. Porubov, G.M. Muhin, S.M. Stahivskiy, V.M. Tyrtshnik O.A., Boridko, C.V. Parasochkina, G.O. Ponomarenko and others, under examination understood the inspection body for the detection of traces of the crime and special signs.

Today the authors of the concept of "assessment" is also suitable ambiguous.

So, I.S. Andreev, G.I. Gramovich and M.I. Porubov under oswan understand independent investigative activity conducted by the investigator, either by the investigator, or (on its behalf) by the physician and sent directly to the examination of a human body to detect and commit crime, special features and characteristics of functional and anatomical nature [7, p. 124].

J.V. Gavrilin believes that the examination is investigative action, which is a kind of investigative inspection consists of inspecting the body of a living person to detect it special signs and traces of the crime, injuries, identifying a state of intoxication or other qualities and traits that are of importance for the criminal case, if it does not require a forensic examination [8, p. 19].

In these definitions, the scientists point out that the examination consists of inspection of the body of a living person.

However, according to V.M. of Tertishnik, the question arises, can there be in general examined person who has no legal standing, for example, is not questioned as a witness, or a person who because of their mental deficiencies cannot be a witness, suspect, accused [9, p. 276].

We can agree with the opinion I.L. Petruhina, which indicates that the

examination of citizens who do not have in criminal case no procedural provisions is not valid [10, p. 133]. If you follow the letter of the law, the conclusion, according to V.M. Tertishnik has a right to exist [9, p. 276].

G.M. Mukhin and D.V. Ishutin-Fedotkov in determining indicate that the examination may be held against the suspect, the accused and the victim [11, p. 134].

S.A. Sheifer, Y.G. Torbin, S.M. Stahivskiy and other scientists indicate that in addition to the suspect, accused and victim examination can be conducted and in relation to the witness [12, p. 75; 13, p. 6; 3, p. 31].

In accordance with the law, the right to inviolability of the person are equally open to all citizens. If in exceptional cases, the law allows the production of examination of victims, it is unlikely that there is a need to eliminate the possibility of the examination of any other category of persons characteristically, searched may be subjected to any person (when there are factual basis), regardless of their procedural status [9, p. 276].

In this definition, the author points out that the examination is conducted by the investigator (the person in charge of the inquiry), and in some cases own medical examiner or doctor.

Other authors support the view of V.M. Tertishnik, however, add that the survey is carried out in the presence of witnesses of the same sex with examination face [14, p. 49; 13, p. 4].

Other scientists point to the mandatory presence at the examination of witnesses, and in necessary cases and physician [15, p. 170; 16, p. 348].

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 (attorney) carries out the examination, if it is not necessary to conduct a forensic medical examination. At the same time, the criminal procedure codes of the Republic of Belarus, Kazakhstan and Kyrgyzstan do not allow examination of the witness.

Based on the nature and characteristics of the examination, it should be noted such features:

- the examination is a kind of investigative inspection, the specificity of which is determined by the peculiarity of its object (the object is the body of a living person);

- examination is associated with invasion of the rights and freedoms of man, therefore, is regulated as a separate investigative action, and in respect of its production has a special procedural form;

- the survey is carried out on the basis of the decision of the Prosecutor of investigative actions;

- examination is one of the investigative actions that can be carried out with participation of a specialist (forensic medical expert or doctor);

- the investigator is not entitled to be present at the examination of a person of the opposite sex, if it relates to the exposure of persons subject to examination;

- if the examination is not permitted acts that are degrading the honour and

dignity examination person, or procedures that are harmful to her health.

Therefore, in our opinion, under examination 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.

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, detection or certifying the availability of which is set to establish the truth. Legal - the decision of the Prosecutor.

**Conclusion.** 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. However, a clear criminal procedure regulation examination is still not fully resolved.

#### **Бібліографічні посилання**

1. Дрозд В. Г. Організаційні і тактичні аспекти розслідування умисних тяжких тілесних ушкоджень : автореф. дис. ... канд. юрид. наук : спец. 12.00.09 «Кримінальний процес та криміналістика; судова експертиза; оперативно-розшукова діяльність» / В. Г. Дрозд. – Київ, 2009. – 16 с.
2. Кузьмічов В. С, Юсупов В. В. Алібі у розкритті злочинів : навч. посібник / В. В. Кузьмічов, В. В. Юсупов. – К. : КНТ, 2007. – 264 с.
3. Стахівський С. М. Слідчі дії як основні засоби збирання доказів : наук.-практ. посіб. / Стахівський С. М. – К. : Атіка, 2009. – 64 с.
4. Громов В. Дознание и предварительное следствие / Громов В. – М., 1928. – 147 с.
5. Строгович М. С. Уголовный процесс / Строгович М. С. – М., 1946. – 287 с.
6. Терзнев Н. В. Процессуальная природа освидетельствования / Н. В. Терзнев // Советское государство и право. – 1954. – № 7. – С. 11-13.
7. Андреев И. С, Грамович Г. И., Порубов Н. И. Криминалистика : учеб. пособие / под ред. Н. И. Порубова. – Мн. : Выш. шк., 1997. – 344 с.
8. Гаврилин Ю. В. Криминалистическая тактика и методика расследования отдельных видов преступлений в определениях и схемах : учеб. пособие / Ю. В. Гаврилин. – М. : Книжный мир, 2004. – 332 с.
9. Тертишник В. М. Гарантії істини та захисту прав і свобод людини в кримінальному процесі України : дис. ... докт. юрид. наук / В. М. Тертишник. – Д., 2010. – 473 с.
10. Петрухин И. Л. Свобода личности и уголовно-процессуальное принуждение / И. Л. Петрухин. – М. : Наука, 1985. – 239 с.
11. Мухин Г. Н. Криминалистика : учеб. пособие / Г. Н. Мухин, Д. В. Исютин-Федотков; Мин-во внутрен. дел Респ. Беларусь, Акад. МВД. – Минск : Акад. МВД Респ. Беларусь, 2009. – 227 с.
12. Шейфер С. А. Следственные действия. Основания, процессуальный порядок и доказательственное значение / С. А. Шейфер. – Самара : Самарский университет, 2004. – 227 с.
13. Торбин Ю. Г. Тактика проведения освидетельствования : метод. рекомендации. / Торбин Ю. Г. – М., 2001. – 28 с.
14. Борідько О. А., Парасочкіна К. В., Пономаренко Г. О. Тактика слідчих оглядів : навч. посібник / Борідько О. А., Парасочкіна К. В., Пономаренко Г. О. – Херсон: Видавець

Чуєв С. М., 2006. – 72 с.

15. Белкин Р. С. Криминалистическая энциклопедия. – 2-е изд., доп. – М. : Мегатрон XXI, 2000. – 334 с.

16. Макаренко Є. І., Тертишник В. М., Лобойко Л. М. Дізнання в міліції та в митних органах : навч. посібник / Макаренко Є. І., Тертишник В. М., Лобойко Л. М., Ліпинський В. В., Шиян А. Г. – Д. : Ліра ЛТД, 2003. – 452 с.

**Чаплинский К. А. Освидетельствование как предмет криминалистического исследования.** Изучены актуальные проблемные вопросы освидетельствования при проведении досудебного следствия. Рассмотрены научные подходы к определению понятия и сущности освидетельствования.

**Ключевые слова:** освидетельствование, тактика, тактическое обеспечение, следственные действия.

**Chaplins'kyi K. O. Examination as an object of criminalistics research.** The scientific article deals with consideration of actual problem questions of examination at pretrial investigation carrying out. The author have considered the scientific approaches to definition of concept and essence of examination.

**Keywords:** examination, tactics, tactical supply, investigatory actions

Надійшла до редакції 24.09.2014

**Горбачевський В. Я.**

доктор юридичних наук, доцент,  
заслужений юрист України,

(Національна академія внутрішніх справ)

УДК 343.12

## **ОСОБЛИВІ ФОРМИ ВЗАЄМОДІЇ СЛІДЧИХ ТА ПРАЦІВНИКІВ ОРГАНУ ВНУТРІШНІХ СПРАВ У РЕАГУВАННІ НА ЗАЯВИ ТА ПОВІДОМЛЕННЯ ПРО КРИМІНАЛЬНІ ПРАВОПОРУШЕННЯ**

Розглянуто особливі форми взаємодії слідчих та працівників органу внутрішніх справ у період надходження заяв і повідомлень про кримінальні правопорушення, а також питання чіткого дотримання вимог встановленого порядку процесуальної діяльності на початковому етапі досудового провадження.

**Ключові слова:** заява про кримінальне правопорушення, Єдиний реєстр досудових розслідувань, журнал єдиного обліку, слідчо-оперативна група, огляд місця події, розкриття злочину за гарячими слідами, слідчі (розшукові) дії.

**Постановка проблеми.** Чітке дотримання вимог встановленого порядку процесуальної діяльності на початковому етапі досудового провадження є запорукою забезпечення швидкого, повного та неупередженого розслідування і судового розгляду (ст. 2 КПК) [1]. Встановлення та покарання винних, в той же час надійний захист прав громадян можливі лише за умови, що кож-