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## FORENSIC CHARACTERIZATION OF TORTURE

**Summary.** It is elucidated the views of different scientists, regarding the elements of criminalistic characteristic of crime in general and suggested the elements, which can be used during criminalistic characterization of torture, conducted analysis of each element of criminological characteristics of torture.

**Key words:** torture, elements, criminalistic, criminal-legal and criminal-procedural characteristic, subject of proof.

**Problem.** Torture, as one of the types of crime conceal increased social danger, which manifests itself in the fact that it is directed against life and health of person, her physical and psychological integrity, is the worst of all humiliations personality. During the investigation of the crime as an important aspect serves the realization of it characteristic, as criminal-legal, criminalistic, criminological and criminal-procedure.

**Analysis of recent research and publications.** A significant number of scientists of procedural law and criminologists investigated this problematic, among them: A.P. Razvan, N.V. Subbotynoy, Y. Kharchenko, E.P. Yschenko, A.A. Toporkov, A.M. Hlus, V.P. Bahina, R.S. Belkin, I.O. Vozhrina, J.F. Gerasimov, V. Goncharenko, L.Y. Drapkina, O. Kolesnichenko, N.I. Klimentko, V.E. Konovalova, V.S. Kuzmicheva, V.K. Lysychenko.

**Forming the purposes of the article.** To uncover the meaning of the definition of "criminalistic" characteristic, to explore its elements and to decide, which elements of criminological characteristics should be used during the investigation of torture.

**Presentment of the main material research.** On the purpose of effective investigation of a crime it is necessary not only give attention to operational-search measures and investigative experience, and also fully carry out research of the crime, study its characteristic, which in future can help to correctly identify the tactics of the investigation.

In legal literature it can be seen, that a certain type of crime is analyzed by the following characteristics as criminal-legal, criminal-procedure, criminological and criminalistic. Practical using of criminological characteristic of separate types of crimes require a comprehensive approach connected with involvement of data of other types of characteristics [1], as they interrelated between themselves.

Criminal-legal characteristic is formed on the base of analysis of the features of crimes, that are of importance for the solution of question about the existence of crime syllable, its correct qualification and clarify other criminal-legal questions [2, p. 33].

Criminological characteristic consists of systematized data about the dynamics of crimes, which are of importance during establishing its reasons and conditions promoting the commission of crimes and taking measures to eliminate it. It also includes data about the typical mechanism of criminal behaviour allowing to elaborate a typology of offenders and other data, which are of importance for the practice of crime prevention.

The base of criminal-procedure characteristics represents the subject of proof (art. 64 CPC of Ukraine) – Procedure Institute,

contents of which discloses requirements of the law about comprehensive, complete and objective investigation of the case circumstances and creates preconditions to find out, which range of particular circumstances should be set in each case. This characteristics also includes other states of procedural law, including those describing the peculiarities of cases defections of this category of infringement cases and the adoption of certain procedural decisions etc. [16, p. 41].

Criminalistic characterization of crimes – is a system of interconnected criminalistic data about the elements of the crime syllable of certain types of crimes, contributing to their detection and investigation [4, p. 97]. There is no specific definition in the legal literature of what criminological characteristics is. In our opinion, criminological characteristics of crime syllable – is a system of features, which provide information about the identity of the offender and the victim, method and instrument of commission the crime and also the objective side of the crime.

As A.A. Eysman noted, criminalistic characteristics of crime is a scientifically grounded typical list of circumstances, that is subject to established over the case as legally relevant and intermediate (evidence) with the selecting among them hidden, unobvious circumstances, that characterize the crime of this type (group) at the start of the investigation and serve effective organization of investigation [5, p. 99]. Criminalistic characterization creates a range of circumstances, which using criminal-procedural characteristics set the investigation on the initial stage.

It should also be noted, that the criminal-legal characteristics serves as the foundation of the analysis of the characteristics of the crime, because when criminal-legal description of a crime is received, we can analyze this crime at the criminological, criminalistic and criminal-procedure aspects.

Like any system, criminalistic characterization consists of interconnected components – elements. Kinds of elements and their number are determined in different ways in literature: from direct following system of elements of crime syllable to the list of criminalistic significant elements, which are not always structural consistent with the system of criminal-legal characteristics of a certain type of crime [1], because criminalistic characteristics of crimes is wider than it criminal-legal and criminal-procedural characteristics, because it contains not only of the system of circumstances, which have criminal-legal value, but also a number of other factors.

One of the first who conducted criminalistic characterization was L.O. Sergeev, who identified such elements: peculiarities methods and traces of certain types of crimes; the circumstances, that characterize the participants of crimes and their criminal connections; objective side; time, place and situation of committing crimes; the object of assassination and others, and the interconnection of these factors [6, p. 43].

Leading scientists-criminologists of Ukraine, the authors of the textbook (Soviet criminology. The Technique of investigation certain types of crimes. Ed. Lysychenko V.K. – K., 1988) selected five elements of criminalistic characteristics: 1. Way of preparation,

commission and concealment of a crime; 2. Place, time. Situation, the tools and means of committing a crime; 3. Subject of attempt; 4. A Affected person; 5. Offender: 6. Traces of the crime (in the wide meaning) [7].

Regarding the elements of criminalistical characteristics, we are more inclined to the thoughts of scientists-criminologists, who are selected five elements of criminalistical characteristics. During the investigation of torture, conducting criminalistical characterization of this crime, we would also add the following items, which are allocated by V.K. Havlo, as: 1) the investigatory real situation, which was formed at the time of initiation of criminal case; 2) the situation of investigation at the initial stage at the time of the indictment and after it [8, p. 123], because the most often actions of torture, which appear, occur before the opening the criminal proceedings, and also person-victim, while presentation of prosecution to her, can change the evidence, which she gave under pressure or force.

On this basis, the criminalistical characteristics of torture can be seen as a system, consisting of the elements: Way of preparation, committing and concealing of a crime, place, time, situation, the means of committing a crime, the subject of encroachment, the person of the victim, offender, traces of the crime (in wide meaning), the investigatory real situation, which was formed at the time of initiation of criminal case, the situation of investigation at the initial stage at the time of the indictment and after it.

**1. The way of preparation, committing and concealing of a crime.** Under the way the committing the crime G.G. Zuykov understand the system of preparation actions, committing and concealing a crime, determined by the environmental conditions and psychophysical personality quality, associated with the selective using of appropriate tools, terms of space and time [9]. In our opinion, regarding the way of preparation and committing torture, all this is happening spontaneously and without any preparation, because the most often detained and taken to the district police departments or other government agencies persons get under acts of torture. Even when orders from chief was received, «performers» do not carry preparation. They simply perform the actions, which are qualified as torture, in obtain to receive information about the crime or confession. Regarding concealing the commission of the offense, the person who did it intimidate the victims, that those actions can be repeated with them or threaten them, what generates a high percentage latency of this crime and causing injuries, so that they are not obvious.

**2. Location, time, environment, the means of committing the crime.** The place of committing the crime in the criminalistical characteristics displayed by different features. Synthesis of investigative practice shows the availability of crime features with the way of commission, data relating to the offender, place of his residence, staying etc. The specific totality of features of crime place determined in the method on the base of the relevant summaries of practice.

The time of the committing of crime has the criminal-legal, procedural and criminalistical importance. Criminalistical value is determined by that in committing many crimes there is some selectivity in the time of criminal acts.

The situation of the place of committing a crime – is part of the material environment, which includes, except the area of the territory, a totality of different objects, the behavior of the participants of event, psychological relationship between them etc. The situation as a totality of material objects on the place of crime reflects the mechanism of event, which is investigated, the offender's actions and others [10, p. 343-344]. Regarding the place of commission of torture, the most often it happens in law enforcement, more precisely, in the offices of the police, in

temporary holding cells. Also as the place of committing this crime can be considered psychiatric hospitals, investigators insulators, paramilitary units and others. Regarding the place of commission of torture in cities, towns and villages, the statistics shows, that in 2007-2009, in cities and towns was committed 123 crimes under art. 127 of the Criminal Code of Ukraine, and in the villages in the same period were committed 66, that almost half as many.

**3. The subject of encroachment.** Regarding the subject of encroachment, it is social relations, that provide protection of person, including life and health; direct primary – health of a person as a certain physical and mental state at the time which preceding the encroachment, and additional optional direct – public relations, which provide protection of freedom, honor and dignity of person [11, p. 74–75].

**4. The person of the victim.** In ch. 1, art. 49 of the Criminal Code of Ukraine the legislator defines the victim as the person to whom by the offense was suffered moral, physical or property damage. A.N. Krasikov, V.D. Ryvman, G.I. Chechel support the provisions of the criminal procedure legislation and substantive law and claim, that the victim of a crime can only be an individual, whom was suffered moral, physical or material damage. A.N. Moysyuk also defines the crime victim as a person, to whom in the result of subjective desire of offender or subjective created circumstances caused physical, moral or material damage [12, p. 7].

The classification of the victims is equally important, because their classification plays an important role, as long as it allows to judge fully about the behaviour of the victim, the situation, that preceded the crime, the relationship with the offender, the victim's role in the mechanism of the committing the crime, about the ways and means of protecting the victim, about ways of prevention the crime [13, p. 112].

Regarding the court statistics relatively the victims, it is imperfect. It does not reflect sufficient data about the victims, including on torture, by category, by type of damage, etc [14, p. 130]. This, as noted above, indicates, that the judicial and law enforcement agencies, human rights organizations, and also researchers are unable to obtain full statistics about victims of crimes neither age nor sex, nor the social status or other characterizing features.

In our view, victims of torture, based on the content ch. 1, art. 127 of the Criminal Code of Ukraine are: firstly, the person being tortured directly with certain purpose, which is specified in art. 127 of the Criminal Code of Ukraine and, secondly, the other person, who is tortured by guilty to force her or victim to commit any actions against their will. In practice, resident of Lviv region Gorodok district, the victim in a criminal case, who was almost a day illegally kept in the Railway police station of Lviv and used illegal actions relatively him, filed an application for committing unlawful acts by police officers to the prosecution Railway area of Lviv.

In a statement laid down all the circumstances of the illegal detention and humiliation under the guy in the Railway police station in Lviv from 22.00 March 31 to 19.00 April 1. The victim stresses, that during this time he was deprived of sleep, rest, food, that was categorically contraindicated by the doctor. The guy said, that employees of the police station several times struck him blows, threatened [15].

A.N. Ybrayeva says that: firstly, any person can become a subjected of torture, but a degree of risk is higher for a suspect in a criminal proceedings; secondly, the world practice shows, that victims of torture may attract criminal by other characteristics, including age, sex, religion, profession, etc. [16]. It should agree with this opinion because experience shows, that most victims of torture are persons detained by law enforcement officers.

**5. Offender.** I.M. Danshin examines the notion of person (individual) of criminal – as a totality of essential and stable social characteristics and features, socially important biopsychological peculiarities of individual, which, objectively realized in particular committed crime, give to the committed crime the nature of public danger and the person guilty in it – properties of public danger, in connection with which, she is attracted to liability under criminal law [17, p. 37]. The person of offender in art. 127 of the Criminal Code of Ukraine, is a person, who committed actions stipulated in disposition of article with a definite goal. As for the crime expressed high latency, so it should be considered that a person of criminal is investigated only after writing by victim a report about committing regarding her penal act.

**6. The traces of crime.** Traces of criminal activity – is implicit and explicit changes, which lead to violations of human functions, objects and relations between them. Most of obvious traces are obtained during the inspection of the place of event, on which the procedural decisions are taken by the investigator.

In criminalistics characteristics trace picture includes: 1) changes in the proprietary situation of the place of crime. This changes, reflecting the offender's actions, victim's and others, actions of tools, means and mechanisms, consist in violation of the original state, location, structure of the various objects, which make proprietary environment, in which the offense was committed; 2) display traces (traces of hands, feet, tools, etc.); 3) items – evidence, including documents and things and microparticles. The set of specific objects, which serve as evidence, for various crimes, is different. For example, the murder – traces of blood; cases of accidents – remains of fuels and lubricants etc. 4) the persons, who may be questioned as witnesses. Personal perception of crime makes person as witness and the witness must examine for this reasons [10, p. 346].

When committing of torture happens, traces on human body appear as traces of crime, which may be obvious or hidden. To receive confirmation about traces, that they were received during the application of the acts, which are qualified as torture, this person is sent for passing a forensic medical examination.

Information about material evidence often can be obtained from victims of torture, they may make rubber and wooden shelves of electric vehicles and others.

Conclusions. Summarizing, it should be recognized, which type of the characteristics is most important, or which is not need to held, because they are interconnected. For example, if we carry characteristics of subject of a crime at the criminal law perspective, we will also cover criminological characteristics of offender.

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#### Коваль М. М. Криміналістична характеристика катування

**Аноація.** У статті висвітлено думки різних науковців щодо елементів криміналістичної характеристики злочину загалом і запропоновано елементи, які можна використувати під час криміналістичної характеристики катування, проаналізовано кожен елемент криміналістичної характеристики катування.

**Ключові слова:** катування, елементи, криміналістична, кримінально-правова та кримінально-процесуальна характеристика, предмет доказування.

#### Коваль М. М. Криминалистическая характеристика пытки

**Аноація.** В статье освещены мнения различных ученых относительно элементов криминалистической характеристики преступления в целом и предложены элементы, которые можно использовать при проведении криминалистической характеристики пытки, проведен анализ каждого элемента криминалистической характеристики пытки.

**Ключевые слова:** пытки, элементы, криминалистическая, уголовно-правовая и уголовно-процессуальная характеристика, предмет доказывания.