

Problems of legality of investigative actions aimed at finding evidence

Проблеми законності проведення слідчих дій спрямованих на виявлення доказів

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Abstract

The purpose of the article is a comprehensive study of the problems of establishing the guilt of a person in the offense committed by means of pre-trial investigation by investigators, prosecutors and other persons authorized to do so, as well as establishing the lawfulness of such procedural actions. According to the purpose, it is substantiated that the investigative review is a visual inspection by the authorized persons of the object with the purpose of revealing the traces of the crime, the objects related to its commission, as well as the information about the fact and mechanism of its commission reflected in the features of this object and other circumstances relevant to the proceedings. It is established that the factual basis for the review is primarily data that indicate the possibility of detecting on the body of the person traces of the offense or special signs. Its special procedural basis is the motivated decision of the prosecutor. Procedural actions such as corpse exhumation, investigative experiment and forensic examination have been considered and analyzed. In the process of researching the topic, the authors conclude that in Ukraine the legality and objectivity of investigative actions needs to be more clearly enshrined in law. In particular, the authors propose an additional list of objects of the investigative review and the definition of the investigative examination, the separation of the actual grounds for conducting the examination, the approval of the provisions on the mandatory participation of those understood during the exhumation of the corpse as the investigator, the definition and actual reasons for conducting the

Анотація

Метою статті є комплексне дослідження проблем встановлення винуватості особи у скоєному правопорушенні за допомогою проведення досудового розслідування слідчими, прокурорами та іншими уповноваженими на це особами, а також встановлення законності проведення таких процесуальних дій. Відповідно до мети обґрунтовано, що слідчий огляд – це здійснюване уповноваженими особами візуальне обстеження об'єкта з метою виявлення слідів злочину, предметів, що мають відношення до його скоєння, а також відображеної в ознаках цього об'єкта інформації про факт і механізм його скоєння та інші обставини, що мають значення для провадження. Встановлено, що фактичною підставою огляду є перш за все дані, які вказують на можливість виявлення на тілі особи слідів правопорушення або особливих прикмет. Спеціальною ж процесуальною його підставою є мотивована постанова прокурора. Розглянуто та проаналізовано такі процесуальні дії, як екзумація трупа, слідчий експеримент та судова експертиза. В процесі дослідження теми статті, автори приходять до висновку про те, що сьогодні в Україні законність та об'єктивність проведення слідчих розшукових дій та негласних слідчих дій потребує більш чіткого законодавчого закріплення. Зокрема, авторами пропонується доповнений перелік об'єктів слідчого огляду та саме визначення слідчого огляду, виокремлення фактичних підстав проведення огляду, затвердження положення про

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investigative experiment as an action, the purpose of which is the experimental verification or refinement of factual data obtained in the course of the investigation, as well as the determination and factual basis of the conduct and appointment of forensic expertise.

Keywords: examination, forensic examination, investigative experiment, prosecutor, investigator.

Introduction

The purpose of criminal proceedings is to protect the individual, society and the state from criminal offenses, to protect the rights, freedoms and legitimate interests of participants in criminal proceedings, as well as to ensure prompt, full and impartial investigation by investigators of various bodies, and the organization and procedural guidance of pre-trial investigation, decisions in accordance with the law other issues during criminal proceedings, oversight of lawless and other investigative actions by law enforcement agencies is carried out by the prosecutor.

In Ukraine, in order to objectively establish the guilt of a particular person in the crime, the investigating prosecutor must not only initiate a pre-trial investigation, but also conduct certain investigative actions. Investigative actions, in turn, occupy a special place among the range of powers of the investigating prosecutor.

The article deals with the lawfulness of these procedural actions, namely investigative examination, investigative experiment and forensic examination. Unfortunately, in Ukraine there is no clear definition of the legality and objective necessity of conducting investigative search actions and unspoken investigators. In particular, according to Art. 237 of the Code of Criminal Procedure of Ukraine, in order to identify and record information about the circumstances of the offense investigator, the prosecutor conducts a survey of the area, premises, things and documents. At the same time, the legislative act does not specify either the responsibility for the misuse of the data collected by the investigator, nor the restrictions on conducting such a review.

Also, such an instrument of the prosecuting prosecutor's powers of review as a person deserves special attention. According to Part 1 of

обов'язкову участь понятних під час проведення експерименту трупа як слідчого огляду, визначення та фактичні підстави проведення слідчого експерименту як дії, метою якої є експериментальна перевірка чи уточнення фактичних даних, отриманих в ході розслідування, а також визначення та фактична підстава проведення та призначення судових експертиз.

Ключові слова: огляд, прокурор, слідчий, слідчий експеримент, судова експертиза.

Art. 241 of the Code of Criminal Procedure of Ukraine, the investigator, prosecutor examines the suspect, witness or victim for the detection of traces of a criminal offense or special signs on their bodies, unless forensic examination is required. Pursuant to paragraph 4 of this Article, namely, during the examination of a person, actions that diminish the honor and dignity of a person or dangerous to his health are not allowed, if necessary, the presence or absence of a person to be examined, traces of a criminal offense or special features through photography, video recording or other technical means. Although images that may be considered offensive to an educated person are stored in a sealed form and can only be provided to the court directly during the trial, there are a number of issues regarding the proper storage and distribution of such records within the competent authority. To limit these shortcomings, it is necessary to add to the article the definition of the actual grounds for carrying out such an examination, which largely systematizes the conduct of the examination procedure of the person without the likely impact on the quality of the use of such an instrument.

The peculiarity of investigative actions aimed at studying material sources of evidence is the emergence of an investigative experiment among them. Thus, according to Part 1 of Art. 240 of the CPC "In order to verify and clarify information relevant to establishing the circumstances of a criminal offense, the investigator, the prosecutor shall have the right to conduct an investigative experiment by reproducing actions, circumstances, circumstances of a certain event, conducting necessary experiments or tests." However, given that other investigative actions may be conducted to verify and clarify the information relevant to establishing the circumstances of the offense, such a formulation of the purpose of the investigative experiment is quite contradictory. That is why it is necessary to

specify the actual reasons for conducting the investigative experiment, as well as to specify the specific factual grounds for it.

Methodology

The methodological basis of the article is a set of approaches and methods of scientific knowledge. The systematic approach allowed us to investigate the problems of the lawfulness of investigative actions aimed at identifying evidence. Achievement of goals and objectives within the chosen topic of the article is based on a set of scientific methods of philosophical (dialectical, hermeneutic), general scientific (analysis, synthesis, induction, deduction, analogy, etc.) and special scientific levels (normative analytical, method of complex analysis, comparative method). Research methods have allowed to carry out scientifically sound analysis of the concept of investigative actions, methods of conducting investigative actions, to study scientific works and jurisprudence on investigative actions, as well as to determine the objectivity and legality of conducting pre-trial investigation by authorized bodies and persons.

The methodological basis of the study is the dialectical-materialistic method of knowing social phenomena and processes. The study used the historical and legal method. It provided an opportunity to trace the process of development of criminal procedural legislation and the science of criminal procedure about investigative actions in criminal proceedings. Using the comparative legal method, the views of scientists on particular issues of the institute of investigative actions in criminal proceedings in general, as well as their particular types, as well as the norms of the current criminal procedural legislation of Ukraine and the legislation of other states within the subject of the research were analyzed. Due to the formal legal method, the norms of the current CPC of Ukraine and other regulatory legal sources were elaborated, signs were established and corresponding concepts were formulated; the characteristics of investigative actions, the factual and legal grounds, as well as the general requirements for their conduct; proposals are made to improve certain criminal procedural rules. The method of system-structural analysis allowed us to investigate the procedure for conducting certain types of investigative actions, the powers of the investigator, the head of the pre-trial investigation body, the prosecutor, the investigating judge regarding the conduct of certain types of investigative actions.

The dialectical method, as a general method of scientific knowledge, addressed all issues of the topic in dynamics, revealed their interconnectedness and interdependence, revealed the state of scientific elaboration of evidence in criminal proceedings on crimes related to public procurement. The method of systematic analysis, as well as the system-structural and formal-logical methods made it possible to analyze the concept and content of evidence in criminal proceedings. The formal and legal method allowed us to raise the issue of gathering evidence and using it in criminal proceedings.

The outlined tasks have led to the widespread use of certain methods of scientific research: the formal and legal method - to define the notion of investigative actions, systematize and characterize the procedural rights and responsibilities of investigative bodies, the order of their participation in proving circumstances that are relevant for the refutation of suspicion (the prosecution), the disclosure of the content of the legal rules governing the means of investigation at different stages of criminal proceedings; system-structural method - for the isolation and analysis of some types of investigative actions, such as investigative review (inspection of the terrain, premises, things, documents, persons, etc.), which in their totality and interconnection form a coherent system that causes meaningful filling relevant procedural activities of the investigative body; historical and legal method - to determine the tendencies of procedural institutionalization of the investigative investigation, taking into account the retrospective analysis of the development of legislation and scientific views on this issue.

The research methods are chosen according to the purpose, tasks, object and subject of the research. The article is based on general scientific and special methods of scientific cognition, the use of which in the interconnection contributed to the comprehensiveness, objectivity and validity of the results of the research. The dialectical method made it possible to investigate the process of determining the authenticity of a witness's testimony in criminal proceedings as a holistic phenomenon in the interrelation of its elements. The search-bibliographic method provided a systematic search for literature sources on the topic of research.

Results and discussions

Investigative (investigative) actions aimed at investigating material sources of evidence are investigative review, investigative experiment and forensic examination. And the most common of these is the investigative review (Criminal Procedure Code of Ukraine dated 13.04.2012). The positive of this rule is that it defines the purpose of the investigative review. However, its wording as "the detection and recording of information about the circumstances of a criminal offense" is inaccurate, since in its course the fact of the act, and then its circumstances, is established first. In addition, it not only reveals information but also traces and objects that are relevant to the crime and may have independent meaning as sources of factual data.

In Art. 237 of The Criminal Procedural Code of Ukraine also identifies the sources from which the necessary information, recorded in physical features, can be obtained. However, it is obvious that the list of these sources that are the objects of interest identified in this article, including "terrain, premises and documents" is incomplete. In addition, a literal interpretation of this provision may give rise to the conclusion that this list is exhaustive, indicating its technical and legal imperfection. And since Art. 237 is general and relates to the inspection of any object, in it, in defining the review as an investigative action, instead of the specified list, the phrase "review of an individual object" could be used, and in their parentheses to define a more complete list of them, in particular : locations, dwellings, other possessions, persons, corpses, objects, documents, etc.

In addition, on the one hand, the examination can be carried out not only by the investigator and the prosecutor, but also by the court and other persons, and on the other hand, in such a design, if the examination is performed only by the investigator or the prosecutor, it may give the impression that others, and above all discerning participants in this investigation do not participate in it. Therefore, it would be more appropriate to list these persons in the definition of the review rather than to cover them with the term "authorized persons".

It is also important to emphasize that this is not any fixation of information, but fixation in the manner prescribed by law (procedural fixation). In view of the said part 1 of Art. 237 of The Criminal Procedural Code of Ukraine should be worded as follows: inspection is by an authorized person in accordance with a procedure prescribed

by law a visual inspection of an individual object (place of incident, dwelling, other possession, person, corpse, object, document or any other object) in order to identify the traces of the crime, the objects pertaining to its commission, as well as the information on the fact and mechanism of its commission and other circumstances relevant to criminal proceedings, which are reflected in the features of this object.

Investigative review is based on cognition methods such as observation, description, measurement, subtraction, comparison and experiment.

When characterizing an investigative review, it is classified on different grounds, according to which distinguish its following types: 1) by objects: a) inspection of the terrain, premises, things, documents (Part 1 of Article 237); b) inspection of the corpse (Article 238); c) examination of the corpse related to exhumation (Article 239); d) examination of the person (Article 241). It should be noted that these types of inspection are provided for in the current Criminal Procedural Code of Ukraine, but at the same time, in addition to those provided by law, objects can be inspected animals and their dead bodies, inspection of technical means, etc. ; 2) by tasks: preliminary, basic, additional, repeated; 3) by subjects: investigative, judicial, expert. It is clear that this classification can be made for other reasons, but only the most important of them are named here.

The factual basis for conducting an investigative review is the need to identify and record in a manner determined by law the traces of the crime, the objects pertaining to its commission, as well as the information about the fact and mechanism of committing the crime and other circumstances relevant to its investigation.

Venue inspection is an investigation that involves the direct visual perception, investigation, fixation and evaluation of an investigative (court) locality, premises or other object where the crime is detected, in order to detect traces and other objects there that are relevant to the case. The peculiarities of the inspection of the scene are that it: 1) is an urgent investigative action, and therefore, according to Part 3 of Art. 214 of The Criminal Procedural Code of Ukraine, in urgent cases, a review of the scene may be carried out prior to the filing of investigations into the Single register of pre-trial investigations, which shall be carried out immediately after the review of the case has been completed; 2) is an indispensable investigative

measure, since no other investigative action can provide such complete and objective information as an overview of the scene; 3) is a unique investigative action, because: at repeated examinations, as a rule, the scene is already in the changed state; 4) it is irreparable that, if something is lost, often it can no longer be restored.

Although the venue inspection may be conducted prior to entering the Single register of pre-trial investigations, but in order to ensure the rights and freedoms, the legal position of the Court of Cassation within the Supreme Court is right that "the ground for the inspection of the venue is information about the commission of the criminal an offense recorded in a particular procedural form. Without such information, a review of the scene is not permitted" (Legal Positions and Opinions in Criminal Matters (Supreme Court Jurisprudence), 2019), which is a special procedural basis for its conduct.

With regard to particular types of inspection, particular attention deserves a review of the corpse, which, although a kind of review, regulated by Art. 238 of the CPC of Ukraine, as it can be conducted both within the framework of a site review and as an independent investigative action. Its purpose is not legally defined, although it is to identify the traces of the crime and other relevant circumstances.

In order to improve the procedural regulation of the inspection of the corpse is proposed: 1) Part 1 of Art. 238 of the CPC of Ukraine to supplement the provisions on the participation of the witnesses and state in the following wording: "The examination of the corpse shall be carried out with the obligatory participation of a forensic expert or doctor, if it is impossible to involve a forensic expert in time and in the presence of two witnesses"; 2) taking into account the general principles of criminal proceedings and, in particular, such as "respect for human dignity", Art. 238 of the CPC of Ukraine requires the addition of Part 2 to read as follows: "When inspecting a corpse associated with its total or partial stripping, the presence of other persons not directly related to the conduct of the inspection is not allowed."

It should be borne in mind that since a corpse can be taken out of the burial place and in such investigative activities as: inspection of the scene, verification of testimony on the spot and search, the exhumation of the corpse as an independent investigative action can only be considered as the removal of the corpse from the

place his official burial, in the manner prescribed by the CCP of Ukraine. That is why Art. 239 of the CPC of Ukraine should be supplemented by the definition of this investigative action as follows: "Exhumation of a corpse is carried out in accordance with the procedure established by the CPC of Ukraine for the removal of a corpse from its official burial place for further examination or examination."

Since Art. 239 of the CPC of Ukraine does not provide for the actual grounds for carrying out this investigative action, it should be assumed here that they are necessary to remove the corpse from the place of official burial in order to: 1) establish the presence (absence) of the deceased at the place of official burial; 2) identification of his person; 3) conducting its re-examination or research.

The provisions of Part 1 of Art. 239 according to which "The exhumation of a corpse is carried out by the order of the prosecutor". It is precisely in the resolution that the arguments must be stated, which indicate the necessity of carrying out this investigative action and the possibility of achieving its purpose. It is thanks to such a decree that it is possible to verify its legality and validity.

On the other hand, since the removal of a corpse from the place of its official burial causes a complex of legal relations with relatives of the buried, the administration of the cemetery, etc., it also draws attention to the fact that Art. 239 there is also no indication in this regard, which means that the procedural grounds for this investigative action have not been properly identified. It should be noted that The Criminal Procedural Code of the Russian Federation settles these issues in more detail, because according to Part 3 of Art. 178 of the CPC of the Russian Federation, if necessary, to remove the corpse from the burial place, the investigator issues an exhumation order and informs the close relatives of the deceased. The ordinance is mandatory for the administration of the appropriate burial place. In case the close relatives of the deceased object to the exhumation, the permission for holding it is issued by the court.

Therefore, exhumation needs more regulation. In particular, apart from the definition, it should include: its purpose; the rights and obligations of the relatives of the corpse to be exhumed; duties of the administration of the cemetery during exhumation; the procedure for re-disposal of the corpse; procedure for reimbursement of material costs associated with exhumation and the like.

Occasionally, an examination is also performed to determine a person's intoxication. However, this approach is unjustified since it is impossible to detect the state of intoxication by examination of a person (Schaefer, 2002).

It should be noted that since the review substantially encroaches on a person's constitutional right to personal (bodily) integrity, this necessitates a proper justification for the decision to hold it. That's why according to Part 1 of Art. 241 of the CPC "The review is carried out on the basis of the prosecutor's decision", which is not a formality, since it, first, allows to control the legality and validity of the decision to conduct this investigative action, and secondly, it is a procedural basis for its binding nature. for the person to be inspected. This means that the person to be inspected is not entitled to evade him or her for one reason or another, and if necessary, coercive measures may be applied (Part 3 of Article 241 of the CPC). Moreover, of the 50 cases examined in this study, its results were only taken into account in a court ruling by 46%, indicating that in most cases there was no proper basis for conducting it. And it is the familiarity with the decision to conduct this investigative action that makes it possible to determine its legitimacy.

Therefore, the purpose of the review is to identify on the body of the person under investigation material traces that are relevant to the case under investigation.

And its special procedural basis is the presence of the prosecutor's decision on its conduct.

With regard to compulsory examination, it should be agreed here that the examination of the victim and the witness should only be carried out with their consent. In the case of suspects and accused persons, it may also be enforced. This is because, because these participants committed a criminal offense, certain coercive measures can be applied to them, including a compulsory review. However, if it is denied, it should be remembered that the investigator's conviction is generally able to obtain consent to the review.

Investigative experiment (from the Latin *experiri, experimentum* - test, experiment) - is a scientific experiment, which is a purposeful study of the phenomenon in clearly programmed conditions, which allow to monitor the course of its change, to actively influence it, and in this case need to repeat it in the presence of the same conditions (Kondakov, 1975).

Therefore, the experiment is one of the scientific methods, which is an artificial, purposeful, repeated many times under different, predefined conditions, conducting a certain test or experiment. Its purpose is to confirm or refute the existing hypothesis as to the nature of the phenomenon, its essence, possible ways of controlling it and so on. The value of the experimental research method is that it: 1) makes it possible to explore the object in the so-called pure form, that is, to distinguish it from the diversity of other objects and to study it in isolation from them and from related causes and consequences, which makes it impossible to significantly influence its results by random factors; 2) enables multiple experiments to be performed in programmable variables, including extreme conditions, which makes it possible to verify the stability and reliability of the obtained results. At the same time, it has a limited scope because experimental actions can be socially dangerous.

An investigative experiment can be used in the form of a separate investigative action or tactical admission during its conduct, an integral part of expert research.

The investigative experiment is defined as the investigative action, which is: conducting of special experiments, tests with the purpose of obtaining new and checking of available evidence, as well as checking and evaluation of investigative versions about the possibility or impossibility of the existence of facts that are relevant for the case (Belkin, 1959) consists of conducting investigative experiments in specially created conditions, as close as possible to the investigated event; conducted in order to ascertain the objective possibility of circumstances that are essential to the case by reproducing the event being tested and conducting the experiments (Kolesnik, 2012); is to conduct experiments to test whether certain events could have occurred under certain conditions and in what manner (Konovalova, 2008); it is conducted with the purpose of checking and clarifying the existing and obtaining new evidence by reproducing the circumstances of the event and conducting investigative actions under the conditions in which the corresponding actions could have taken place (Selmashuk, 2017); is directed to check the available evidence and based on them versions about the possibility of the existence of a certain event (committing actions) and carried out by conducting special experiments in conditions that meet the conditions of the present event (Efremova, 2004).

The tasks of the investigative experiment are to verify and clarify the evidence collected, to obtain new evidence, to verify the investigative versions, and to identify the causes and conditions that halted the crime. But, if according to Part 1 of Art. 240 The CPC's investigative experiment, in addition to "conducting the necessary experiments or tests," is also conducted "by reproducing the action, the situation, the circumstances of the event," it gives reason to conclude that it now includes such investigative action as the reproduction of the situation and the circumstances of the event, which was provided by Art. 194 of the CPC in 1960, which also included an investigative experiment. And sometimes it also includes an on-site testimony (Criminal Procedure Code of Ukraine / Scientific and Practical Commentary, 2012).

Therefore, if the essence of the investigative experiment is to obtain the actual data in an experimental way, then the prerequisites for its conduct are: a) the need to obtain the relevant evidence; b) the availability of evidence that such data will be obtained on an experimental basis; c) the impossibility of obtaining them through other investigative actions; d) the ability to reproduce the conditions in which the real event took place. The list of circumstances that may be the subject of an investigative experiment in Art. 240 CPC's not defined. For example, according to Art.181 of the CPC, the possibility of perception of any facts, the commission of certain actions, the occurrence of any event, as well as the sequence of the event that occurred and the mechanism of formation of traces (Criminal Procedure Code of the Russian Federation, 2004).

As to the clarification of the data obtained in the course of other investigative actions, they are meant to clarify the particular circumstances of the case, which further characterize the main circumstances.

Therefore, an investigative experiment is an investigative action designed to experimentally verify or refine the actual data obtained during an investigation. Therefore, the actual reason for its conduct is the need to experimentally verify and refine the data obtained in the course of the investigation and the existence of reasons to believe that its purpose will be achieved.

One of the generally recognized means of obtaining factual data in criminal proceedings is the conduct of expert studies, and one of the conditions for their effectiveness is their timely conduct. However, such a procedural opportunity

is not always used at the stage of the investigation, which necessitates the appointment of expertise at the trial stage. As a consequence, according to the State Judicial Administration, one of the most common reasons for delaying the hearing of cases in court is the very need to appoint a judicial expertise. In particular, three to four thousand such facts are recorded annually (Report on the Rule of Law, 2011).

The reasons for the improper use of forensic expertise in pre-trial investigations are the imperfection of both theoretical approaches to understanding both their procedural nature and the legal regulation of the procedure for their appointment and conduct. Although forensic examinations as a means of solving criminal justice tasks are generally accepted, they are debatable as investigative actions in the theory of evidentiary law. In particular, according to the official definition, "Forensic examination is an expert's examination on the basis of special knowledge of material objects, phenomena and processes that contain information about the circumstances of the case being conducted by the bodies of inquiry, pre-trial and judicial investigation" (On the Prosecutor's Office: Law October 14, 2014 / Verkhovna Rada of Ukraine). As for its procedural nature, as already noted, the approaches of scientists in this regard are ambiguous, as some of them recognize it as an investigative action, while others consider it an action aimed at managing the investigation process (Gerasimov, 1975; Luzgin, 1973), the third - an independent way of collecting evidence (Eisman, 1976). At the same time, it is recognized as procedural and an investigator (Saltevsy, 2001) action and research by an expert on the basis of special knowledge of material objects, phenomena and processes that contain information about the circumstances of the case.

Despite such differing views on the procedural status of forensic examination, it should be acknowledged that the efforts of individual scholars to remove it from investigative activities on the ground that expert research is not conducted by an investigator but by an expert are unconvincing. After all, the investigator does not officially conduct any investigations since, in essence, his activity is aimed at carrying out only the fact-fixing function, that is, fixing it in a manner determined by law, which is obvious. And it is obvious that it is perceived uniquely at the empirical level of knowledge. Moreover, in order to avoid subjectivism at this level, in most cases the investigator conducts investigative

actions with the participation of witnesses and other participants in the process. As for any results of the investigator's theoretical reasoning, they are not evidence. And if the investigator needs to obtain non-obvious - deductive knowledge, then this is done by an examination, regardless of whether the investigator possesses the relevant knowledge to understand the issue that arose during the investigation or not.

Therefore, forensic examination is a complex investigative action, which is a system of legal relations: 1) between the body that appointed it and the expert; 2) between the body that appointed the examination and other participants in the process (victim, suspect, accused, civil plaintiff, defense counsel, etc.); 3) between the expert and other participants in the process (victim, suspect, accused, civil claimant, defense counsel, etc.).

On the other hand, it is generally accepted that procedural law determines the form, not the content, of cognitive activity. As a consequence, although it introduces certain elements of specificity into the process of cognition, the evidentiary right does not establish, abolish, or change the laws of thinking, but, based on objectively existing laws, and reflecting them in procedural rules, determines this order of judicial inquiry which forces one to act in the course of establishing truth according to these epistemological patterns (Rabinovich, Bachinsky, 2015).

As a consequence, forensic examination has a dualistic nature, that is, on the one hand, it is a procedural action and, on the other, a scientific study of an expert, which is carried out on the basis of his specialized knowledge in a particular field of science, technology, art or craft, which causes the need to distinguish procedural and scientific principles from forensic examination. As for the grounds for judicial examination, they are officially defined by Art. 242 of the CPC, according to which the examination is conducted "if special knowledge is needed to determine the circumstances of relevance to the criminal proceedings." Scientists hold the same position. For example, according to Y. Orlov, the basis for the appointment of expertise is the need for special knowledge to determine the circumstances relevant to the case (Commentary to the Code of Criminal Procedure, 2003]. Therefore, in this approach, the actual basis for judicial review is the need to attract specialist knowledge to address issues relevant to criminal proceedings. And this approach is traditional today. It is no accident that judicial review is

defined as "research by a specialist expert mother other objects, phenomena, and processes that contain information about the circumstances of a case under investigation, pre-trial investigation or court" (Legal Encyclopedia, 1999). However, this approach is subject, for example, to forensic research. a medical expert at the scene, or studies conducted with the participation of a forensic expert in conducting an investigative experiment and the like.

At the same time, despite the importance of determining the purpose of the forensic examination, it is not properly defined. And only in Part 2 of Art. 242 of the CPC, which provides for cases of compulsory designation of examination, it is defined. In particular, it is conducted to: 1) identify causes of death; 2) establishing the severity and nature of the injuries; 3) determination of the mental state of the suspect in the presence of information that raises doubts about his conviction, limited conviction; 4) establishing the age of the person, if this is necessary to resolve the issue of the possibility of criminal prosecution, and otherwise this information cannot be obtained; 5) determination of the amount of material damages, if the victim cannot identify them and did not provide a document confirming the amount of such damage, the amount of damage to non-pecuniary character, damage to the environment caused by the criminal offense. In view of this, the basis of such examinations is the imperative requirements of the law, according to which these issues cannot be resolved without the appointment of expertise.

In addition, if according to Part 2 of Art. 223 CPC grounds for conducting investigative (investigative) action is the presence of sufficient information indicating the possibility of achieving its purpose, which means that when ordering an expert investigator must have sufficient information that give him reason to believe that it is through conducting this expert research he will receive this deducing knowledge.

In view of the foregoing, forensic expertise is a procedural action carried out in the course of a specific criminal proceeding, the content of which is based on special knowledge of scientific and practical research with a view to establishing non-obvious factual data relevant in criminal proceedings and fixing them in a statutory conventional method.

The factual basis of the forensic examination is the availability of sufficient information that,

through expert examination, the authorized person will obtain the necessary deductive (non-obvious) knowledge of the circumstances of the crime under investigation.

Conclusion

Therefore, given the amount of analyzed scientific literature and regulations both at the domestic and international level, the authors of the article conclude that today there is an objective need for a clearer legislative fixing of investigative actions. The following should be considered as essential:

1. Inspection - is carried out by authorized persons in accordance with the procedure prescribed by the procedure of visual inspection of the object with the purpose of revealing traces of the crime, objects related to its commission, as well as information in the features of this object about the fact and mechanism of its commission, and other circumstances relevant to the proceedings. The factual basis for the review is the need to identify the traces of the offense, the objects pertaining to its commission, as well as the information on the fact and mechanism of its commission, as well as other circumstances relevant to the course and results of the proceedings, reflected in the features of this object. Special procedural grounds do not require inspection, except for the inspection of the dwelling or other possession of the person, who is carried out according to the rules of their search.
2. The factual basis for the review is data indicating the possibility of detecting traces of an offense or special signs on the body of a person. Its special procedural basis is the motivated decision of the prosecutor.
3. Exhumation of a corpse shall be carried out in accordance with the procedure established by the CPC for the removal of the corpse from the place of official burial for further examination or examination. Its actual basis is the need to: 1) establish the presence (absence) of the deceased at the place of his official burial; 2) identification of his person; 3) conducting his examination or research. Its special procedural basis is the prosecutor's decision.
4. An investigative experiment is a procedural act designed to

experimentally verify or refine the actual data obtained during an investigation. Its factual basis is: 1) the need to verify and clarify experimentally the actual data obtained during the pre-trial investigation; 2) having reason to believe that his goal will be achieved. As for its special grounds, according to Part 5 of Art. 240 of The Criminal Procedure Code of Ukraine "An investigative experiment conducted in the dwelling or other possession of a person shall be carried out only with the voluntary consent of the person who owns them, or upon the decision of the investigating judge at the request of the investigator agreed with the prosecutor or the prosecutor, who shall be considered in the manner provided by this Code, to consider requests for a home or other person's search. And when the experiment requires the involvement of a large number of participants, the use of public places would be appropriate guided by Part 3 of Art. 110 of The Criminal Procedure Code of Ukraine, ordering the appropriate officials to provide the necessary assistance to the investigator.

5. Forensic examination is based on the specific knowledge of scientific and practical research carried out in the course of a specific proceeding, with a view to establishing non-obvious factual data relevant to the case and fixing it in a manner established by law.

The factual basis for this is the availability of sufficient data to believe that the conduct of such a study will allow the authorized person to obtain the necessary (non-obvious) knowledge of the circumstances of the offense under investigation. The general procedural basis for its conduct is the presence of open proceedings, and the special ones - the presence of a reasoned decision of the investigator (court order, investigating judge) on the appointment of expertise and the requirements provided for in Part 2 of Art. 242 of The Criminal Procedure Code of Ukraine for its mandatory appointment.

Special factual grounds for commissioning expert examination are the availability of data that testify to the complexity and large volume of the foreseeable study, which can be conducted within the time limits specified by law only if several experts are involved in it.

Specific factual basis for the appointment of a comprehensive examination is the availability of data that give grounds to conclude that its purpose can only be achieved by simultaneously attracting specialized knowledge from their different industries or by one expert or different experts.

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