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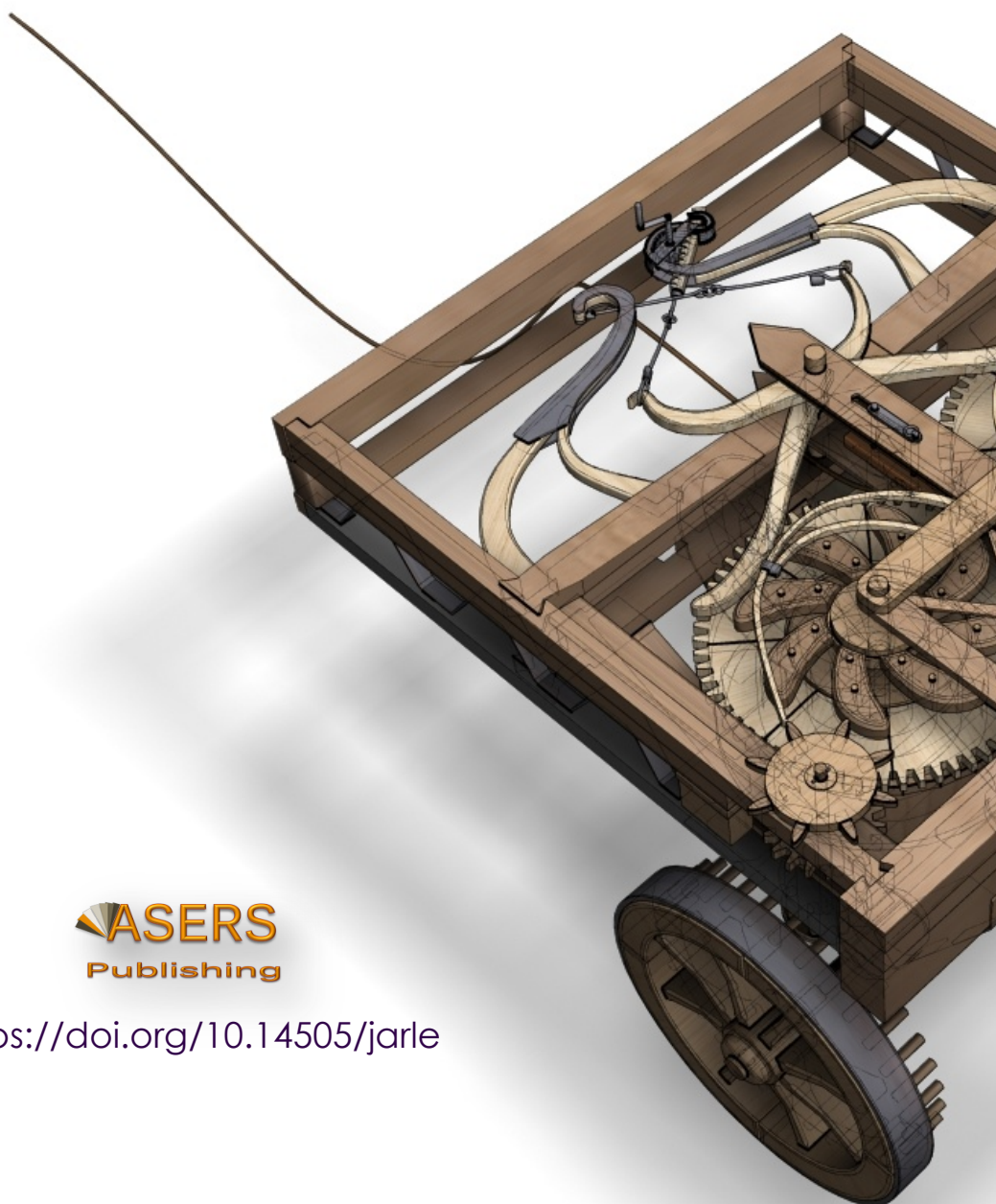
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Tactical Features of Use of Special Knowledge in the Investigation of Torture Committed by Members of the National Police of Ukraine

Ihor M. KOVAL

Department of Theory and Philosophy of Law, Lviv Polytechnic National University, Lviv, Ukraine
kim201@ukr.net

Mariia M. KOVAL

Department of Criminal Law and Procedure, Lviv Polytechnic National University, Lviv, Ukraine
kovalmr@ukr.net

Anatoliy Yo. FRANTSUZ

Department of State Legal Disciplines, KROK University, Kyiv, Ukraine
University of Economics and Human Sciences in Warsaw, Warsaw, Poland
viktoriyav@krok.edu.ua

Daria V. KOUCHERETS

Department of Private Law, University of Modern Knowledge, Kyiv, Ukraine
zag.fortuna@gmail.com

Viktoriia V. SHPILIAREVYCH

Department of Criminal Law, Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine
inst@pu.if.ua

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Abstract:

The article deals with the types of forensic examinations in the investigation of torture committed by officers of the National Police of Ukraine. It was stated that the effectiveness of the investigation of torture committed by members of the National Police depends on the use of the achievements of science and technology and the possibilities of forensic examinations. Based on special knowledge we can find out the mechanism of the formation of traces, tools of torture, the possibility of occurrence of a particular event, phenomenon, fact. A number of investigative actions during which assistance of a specialist or an expert is required are investigated. The list of questions concerning the appointment of a forensic medical examination for determining the severity of bodily injuries is given. It has been confirmed that forensic examinations during the investigation of torture help to identify and study traces and other evidence, determine the psychological state of the participants in the criminal process, determine the degree of bodily harm, the cause of the death of the victim, answer a variety of questions by identifying and studying the facts of the crime and those who committed it.

Keywords: special knowledge; investigation; police; torture; forensics.

JEL Classification: K41; K42; D83; K14.

Introduction

One of the most important tasks of the state is to fulfill the requirements of Art. 3 of the Constitution of Ukraine on the protection of human life and health, its honor and dignity, inviolability and security. To protect these rights and

freedoms of citizens of Ukraine, the Basic Law (Article 28) states that no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment. The fulfillment of these constitutional requirements is the main duty of the law-enforcement bodies of Ukraine, in particular the departments of the National Police, which take measures aimed at eliminating the threats to the life and health of individuals and public security that arose as a result of the commission of a criminal offense (Article 23 of the Law of Ukraine 'About the National Police'). As a rule, torture committed by the employees of the National Police of Ukraine, almost does not exist separately, isolated from other types of crimes in the field of official activity. Most often, torture is the means by which an officer of the investigating (operational) department tries to obtain from the suspect or accused information about the commission of an offense by him or another person in order to achieve the desired result in the service activity.

The statistics show that in the structure of crimes against life and health of a person, torture in Ukraine is: in 2012 - 47 crimes; 2013 - 34; 2014 - 39; 2015 - 45; 2016 - 38. According to Art. 127 of the Criminal Code of Ukraine registered 19 criminal proceedings against police officers, only four of them are directed to the court. According to human rights organizations, in each second case, during the detention of a suspect in a crime, police officers illegally use physical force and special tools, and every third case is characterized by the task of severe physical pain or other violent acts for the purpose of moral degradation of human dignity (Rabinovych 2018). Criminal proceedings for deliberate beatings, torture or other violent acts by police officers with respect to suspects or accused are usually limited to conducting an internal official investigation, only 3% of the proceedings (mostly those where there were grave consequences, or so-called resonance, causing mass indignation to the public) (Fedorenko 2018).

Among the circumstances that adversely affect the effectiveness of the detection and investigation of torture by National Police staff, it is worth highlighting the high latency of such crimes, as well as the fact that special investigative bodies for pre-trial investigation of crimes committed by law enforcement agencies are not formed in accordance with the Law of Ukraine «On the State Bureau of Investigations» and Part 4 of Art. 216 of the Criminal Procedural Code of Ukraine. Despite a fairly large number of publications related to the study of the methodology for investigating crimes against the life and health of the individual in general, as well as the investigation of certain groups and types of crimes, the problem of tactical peculiarities of using special knowledge in the investigation of torture committed by the employees of the National Police of Ukraine till now were left out of the attention of scientists and practitioners.

1. Literature Review

It should be noted that the effectiveness of the investigation of torture committed by members of the National Police of Ukraine depends on the use of science and technology achievements, the possibilities of forensic examinations. The need to apply scientific, technical and other knowledge in the criminal process is connected with the fact that the investigation of a crime is a complex process of knowing the objective reality. In this regard, V. Obratsov notes that, no matter how well-educated and well-trained was an investigator, he would always be a specialist of a narrow profile. Outside of his professional knowledge and skills, there is a wealth of potential in science, technology, crafts, art, than he does not properly own (Obratsov 1997). Therefore, knowledge of the crime and the person who committed it requires the investigator and other participants in the criminal process to apply different special knowledge and skills in certain types of activities.

The problem of the use of special knowledge during the investigation of crimes was investigated by Ukrainian scientists and practitioners, in particular, Goncharenko, Gora, Klymenko, Kostytsky, and others, as well as foreign specialists and many other scholars who devoted their work on the methodology of scientific knowledge, proof and use of special knowledge in criminal proceedings (Goncharenko and Gora 2015; Kostytsky 1990; Goncharenko and Romanovskaya 2013; Goncharenko 1980; Didkovskaya *et al.* 1997). Goncharenko, Gora and other scientists consider special knowledge corresponds to the requirements of modern development of science and can be used in the field of criminal-procedural activity in order to prove certain circumstances of a criminal case, collection and consolidation of evidence, etc. (Goncharenko and Gora 2015; Goncharenko and Romanovskaya 2013; Goncharenko 1980).

There are special features that characterize special knowledge: this knowledge is not well-known, publicly available and individual; they become a person in the process of theoretical and practical preparation for a particular activity; repeatedly used; are provided not in the direct but in the indirect form; are involved in the process in accordance with the procedure established by law, in the presence of participants in the process of the need for such knowledge; are used in the forms provided by the procedural law; their use is associated with a certain level of education and/or training, as well as professional or other experience; such knowledge contributes to ensuring the issuance of a lawful and substantiated act of pre-trial investigation bodies and a court as a judicial authority

(Goncharenko and Gora 2015). Such a definition fully complies with the rules of the current criminal-procedural code of Ukraine.

We agree with the opinion of Z. Sokolovsky, who states that «in order to determine the special knowledge in the procedural sense, it is necessary to proceed from the notion «specialty» (in the sense of a separate, isolated area of science, technology, art), ‘specialist’ (in the sense of a qualified representative of any profession) and mainly from the concept ‘professional special education’. Based on these positions, he gives such a definition that under special knowledge it is necessary to understand the set of information obtained as a result of vocational training that creates for the person who owns the possibility of solving issues in any realm (Sokolovsky 1969). It is worth noting that in the concept of ‘special knowledge’, scientists Goncharenko and Krylov perceive information obtained through professional training (training) and professional activity (practice) (Goncharenko and Gora 2015; Krylov 1976; Goncharenko and Romanovskaya 2013; Goncharenko 1980).

M. Kostytsky and other authors believe that the legislation regulates only two forms of application of special knowledge: the participation of a specialist in investigative actions and the conduct of expertise (Kostytsky 1990). In our opinion, the use of specialized knowledge in the investigation and judicial review of proceedings contributes to the disclosure of crimes, the establishment of truth, the fulfillment of the tasks of criminal justice (Krylov 1976). As practice shows, special knowledge is used in the investigation of any crime and is most often manifested in the appointment of expertise and the conduct of individual investigative actions. Scientists define a specialist as a person who has special knowledge and skills in a particular field of science, technology, art or crafts, is involved in participation in procedural actions in accordance with the procedure established by the criminal procedure law in order to facilitate the identification, consolidation and removal of things and documents, the use of technical means and investigation of materials of the criminal case for the formulation of questions to the expert, as well as to clarify the parties and the court issues, which are part of her professional competence. Specialist’ actions, oral or written advice are not evidence in the case. As a specialist, a person who is not interested in the outcome of the case is invited (Goncharenko and Romanovskaya 2013).

Scientists have identified three procedural forms of application of special knowledge in pre-trial investigation, depending on the subjects that they possess: an investigator, a specialist and an expert (Goncharenko 1980). The necessity of using special knowledge in the criminal proceedings of torture committed by police officers is due, above all, to the specifics of the subject of the criminal offense and the method of committing crimes in criminal proceedings of the specified category. In this regard, the investigator is objectively compelled to invite appropriate specialists to assist in the investigation of such crimes. Consequently, in criminology, special knowledge is defined as scientific, technical and other, including forensic knowledge obtained as a result of generalizations, and skills acquired in the course of work in certain areas of practical activity, which are used together with scientific and technical means in the search, detection, seizure and investigation of traces of crime in order to obtain the evidence and orientation information which is necessary to establish the truth in the case (Kravchenko and Shcherbakovsky 1999).

2. Methodology

The system of general scientific and special-legal methods and methods of scientific knowledge is the methodological basis of the research. In view of the specifics of the topic, goals and objectives of the work, different methods of research are used. In particular, the dialectical method allowed to consider all the issues of the topic in dynamics, to identify their interconnection and interdependence, and also contributed to the understanding of the object of the study on the combination of research needs and practices in the methodology for investigating torture committed by the staff of the National Police of Ukraine. The application of the method of systematic analysis of legal norms allowed to identify gaps and contradictions in the legal acts and formulate proposals for the improvement of the current legislation.

The system method allowed to determine the structuring of the investigation of torture, the systemicity of its stages, features, tasks, as well as characteristic features. The statistical method is used to confirm the theoretical conclusions obtained from the analysis of the investigative practice, and the sociological method – during the questioning and analysis of the materials of the poll of citizens, investigating prosecutors, studying the data of criminal proceedings on the basis of torture.

3. Results and Discussion

Investigation of the materials of investigation and judicial practice shows that investigation of torture committed by police officers is impossible without using of specialist investigators during pre-trial investigation during investigative (search) and other actions. In the process of investigating these crimes, there is a need for the use of scientific,

technical and other special knowledge to determine the place, time of the crime, the situation, as well as the conditions and reasons that have contributed to the encroachment on the life and health of the person. A rather common procedural form of the use of special knowledge is the involvement of a specialist in participating in pre-trial investigation or trial (Article 71 of the Criminal Procedural Code of Ukraine). The subject of this form is a specialist. An expert in criminal proceedings is a person who possesses special knowledge and skills of the use of technical or other means and can provide advice during pre-trial investigation and trial on issues requiring appropriate specialist knowledge and skills (Part 1 of Article 71 of the Criminal Procedure Code of Ukraine). He draws the attention of the investigator to the circumstances associated with the identification and consolidation of evidence, gives an explanation of the special issues that arise during its conduct.

The specifics of the investigation of torture committed by National Police officers require the use of specialist knowledge at the initial stage of the investigation. In particular, the use of specialized knowledge by investigators during the verification of statements, communications, and other information on torture methods for: (1) the timeliness of identifying the features of a particular crime; (2) the determination of a range of circumstances, the verification of which will directly identify the features of the crime; (3) correct evaluation of information. During the inspection, the investigator applies procedural and non-procedural forms of use of special knowledge. The procedural form is the review of the location of torture and other objects. Non-procedural assistance is used by the investigator in the form of advisory assistance of specialists when familiarizing with the official activities of the police; requesting documents; the use of special technical means, etc. For example, the study of certificates, orders, instructions proving a certain fact, requires special knowledge, since they usually contain a special procedure for policing in different situations

In some investigative situations, the investigator uses non-procedural assistance of specialists for obtaining conclusions, acts, other documents on the properties of objects, substances or interrelation of processes, etc. The boundaries of conducting special studies are determined by its objectives, which are aimed at establishing the features of the crime. In most cases, the investigator involves specialists for conducting investigative (search) actions. As P. Ischenko noted correctly, it is expedient to involve specialists in participation in investigative actions in the case of: (1) lack of appropriate specialist knowledge and skills of the investigator; (2) lack of mastery of investigative techniques and means of rapid and qualitative performance of one or another work; (3) the need for aesthetic or tactical reasons to entrust the execution of individual actions to the specialist; (4) simultaneous use of several means of forensic technology; (5) the need to carry out a large amount of work that requires special knowledge and skills (Ischenko 1990).

On the basis of the research of the materials of the investigative and judicial practice, it can be concluded that during the investigation of torture committed by the police, the most widespread investigative (search) action that an investigator conducts with the participation of a specialist is an overview of the place of the event (in 90% of cases the review was conducted with the participation of a specialist). Due to their knowledge it is possible to find out the mechanism of formation of traces, to find tools of torture, the possibility of occurrence of a particular event, phenomenon, fact. During the inspection of the scene of a criminal offense, they will help correctly use the means of fixing, extracting and packaging proofs, correctly compiling their description. In particular, a specialist during the examination of documents will help determine the range of documents required for investigation, provide advice in their study.

Forensic examinations are considered to be the most effective and widespread forms of use of specialist knowledge in the investigation of any crime. Torture is not an exception, as it is evidenced by the results of the analysis of investigative practices. Expertise is a special study by an expert on matters, issues in one or another field of knowledge (Bazhan 1979). According to epistemological nature, examination is a kind of practical knowledge of concrete facts, phenomena using the provisions of science, scientific means and methods according to scientifically developed and tested practical methods. The basis of the examination as a study is the known (outbound) empirical data, and scientific facts that allow to establish the subject of expertise, identify the types of links between empirical data, determine the possibility of existence of the desired fact (Goncharenko and Gora 2015).

The term 'forensic expertise' refers to the form of the use of special knowledge, investigative action, the procedure for studying objects and documents, the expert's conclusion. The appointment and conduct of forensic examinations are regulated in detail by the criminal procedural law and the Law of Ukraine «On Judicial Expertise». The Plenary Session of the Supreme Court of Ukraine, held on May 30, 1997, for the elimination of the mistakes made in appointing and conducting expert assessments, adopted a resolution 'On Judicial Examination in Criminal and Civil Matters', which clarifies the issues that arise in judicial practice. According to Art. 1 of the Law of Ukraine 'On Forensic Expertise', judicial expertise is a study by an expert on the basis of special knowledge of material

objects, phenomena and processes that contain information about the circumstances of a crime that is being investigated by the bodies of inquiry, pre-trial investigation or trial. So, we can say that forensic examination is a process in which a specially authorized person uses special knowledge. The purpose of the appointment of the examination, as already noted above, is to establish non-obvious facts of conducting research in the manner prescribed by law (Pryakhina 2010), because only with the help of an examination the investigator may receive data that is not known to him, as well as have procedural confirmation.

The essence of forensic examination is to investigate the tasks of an investigator or a court expert expert provided to him at the disposal of material objects in order to establish the facts that are relevant for the correct resolution of the case. At the same time, judicial expertise does not investigate legal issues, but only those that go beyond the scope of professional knowledge and practice of the investigator and the court. During the forensic examination the following main tasks are solved:

- identification of objects (people, animals, plants, objects);
- diagnostics of the mechanism of the event (time, method and sequence of actions, events, phenomena, causal relationships between them, nature, qualitative and quantitative characteristics of objects, their properties and characteristics, not subject to direct perception, etc.);
- expert prevention – is an activity of identifying the circumstances what are conducive to the commission of crimes and to develop measures to eliminate them (Rossinskaya 1999).

Judicial expertise during the investigation of torture helps to study traces and other material evidence, to determine the psychological state of the participants in the criminal process, to determine the cause of the death of the victim, accidents, explosions, disasters, that is to answer a variety of issues by identifying and studying the facts of the crime and those who have done. As some researchers rightly point out, the investigator during the preparation for appointment of forensic examinations should: select the circumstances of the case to be investigated, determine the tasks and type of examination; collect the necessary materials for research; choose expert institution or expert; process the appointment of an expert examination and direct the decision to the expert (Didkovskaya *et al.* 1997).

Preparation of materials for examination covers a complex of procedural, tactical and technical measures for the collection and execution of all necessary material evidence, documents, samples, output information: (1) making a decision on the need to appoint an examination; (2) making a motivated decision; (3) selection of materials submitted to the expert's disposal; (4) choice of expert or expert institution; 5) statement of questions, issued for permission; (6) selection of materials submitted to the expert (Rezvan *et al.* 2000), because the investigator must correctly identify the tactics of their actions on an examination and as already was mentioned, in criminal proceedings examination is an important investigation. To this list it is also necessary to add the definition of the kind of expertise that needs to be conducted.

Due to the analysis of criminal proceedings to investigate torture committed by members of the National Police, certain groups of expertise were able to be identified, namely: the forensic examination of the victim was appointed (100%); forensic immunological examination of blood, saliva, sweat, other traces of secretions from the victim (85.7%) and suspect (37%); complex ambulatory forensic psychiatric examination of the victim (44%) and the suspect (55.6%); forensic examinations of different kinds (67.7%), fingerprinting (behind the tracks of the hands, the legs of a person), trasologic (following tracks of shoes, seized instruments of torture), handwriting examination of protocols, explanations, technical and forensic examination of documents (in the footsteps of intellectual or material falsification in documents), etc.

The study of materials of criminal proceedings of torture committed by police officers indicates that forensic medical examinations of victims are often prescribed for the purpose of establishing the existence on their body of bodily injuries, the type of such damage and degree of severity, which permits to qualify the crime and to simulate its possible mechanism, as well as to conduct qualitatively other investigative (search) actions and objectively establish all circumstances of a criminal proceeding. Forensic medical examination is a scientific and practical study, which, according to the decision of the investigating judge, is made by a forensic expert, it covers the resolution of medical and some biological issues arising in the course of the investigation, in order to facilitate the establishment of circumstances to be proved in a particular case. The conducting of forensic and forensic psychiatric examinations shall be appointed by the investigator, prosecutor or court in accordance with the procedure established by the Law of Ukraine ‘On Forensic Examination’, for the resolution of issues requiring specialist knowledge in the field of forensic medicine or forensic psychiatry. Such specialized examinations may be carried out only by state specialized institutions – research institutions of forensic examinations, forensic medical and forensic psychiatric institutions of the Ministry of Health of Ukraine. The organizational leadership of forensic and forensic psychiatric services is carried out by the Ministry of Health of Ukraine.

In accordance with the criminal-procedural rules, the appointment of an examination is mandatory for determining the gravity and nature of bodily harm, the age of the person, if it is necessary to decide on the possibility of bringing it to criminal responsibility, establishing the sexual maturity of the victim (Article 242 of the Criminal Procedure Code of Ukraine). The importance of the conclusion of forensic examination, which may affect the outcome of criminal proceedings, is indicated by the fact that Part 3 of Art. 242 of the Criminal Procedure Code establishes the possibility of compulsory involvement of a person, upon the decision of the investigating judge, the court, for conducting forensic medical examination. Since the category of procedural persons who may be compulsorily involved in the forensic examination is not established, it should be understood that such persons may be suspects, victims, accused (defendants).

The legislator does not determine which kind of expertise these circumstances should be established, but the nature of the tasks to be solved, objects and subject of expert investigation indicate that the mandatory determination of these issues is the appointment of a forensic medical examination of living persons. This is also guided by the highest judicial instance. Thus, in paragraph 27 of the resolution of the Plenum of the Supreme Court of Ukraine of February 7, 2003 No. 2 'On judicial practice in cases of crimes against life and health of a person' it is noted that for the purpose of determining the causes of death, severity and nature of bodily injuries, the appointment of an examination is obligatory. It should be borne in mind that the definition of the presence of signs of particular cruelty, suffering, torture, facial mutilation is the competence of the court. At the same time, it should be borne in mind that the findings of forensic medical examinations only contain a medical assessment of the consequences of a criminal act, and it is in this sense that they should be assessed by investigators and courts in deciding whether a person is guilty of an offense, the circumstances of his commission and his criminal law qualification (Resolution of the Plenum of the Supreme Court 2003).

Forensic medical examination does not answer the question whether the damage is caused in a way that has the character of a special torment. The decision of this issue is the responsibility of the investigator. Establishment of the fact of causing the victim of torture (beatings, torture) belongs to the competence of the bodies of pre-trial investigation and court. Beating does not constitute a separate or special kind of damage. They are characterized by repeated multiple strokes that cause pain. If after the beatings of the victim's body there were damage, they are evaluated according to the degree of severity, based on the usual signs. If the beatings did not leave behind any objective traces, the forensic expert notes the complaints of the victim, indicates that the objective signs of damage were not detected, and does not establish the severity of bodily injuries.

Forensic expert such actions, consisting of multiple or prolonged causing of pain (pinching, flogging, the task of numerous and long but small injuries with dull or sharp-barbed objects, the effect of thermal factors and other similar actions) does not qualify the damage as causing the torture, because it is not within its competence. In such cases, he must determine the presence, nature, localization, the number of injuries, the simultaneous or diffusible nature of their formation, the features of the objects that caused the damage, the mechanism of their actions, as well as the severity of each of the injuries. Incitement of torture, severe physical pain as a result of torture, beating or causing physical suffering through prolonged beatings or other violent acts in order to induce the victim or other person to commit acts contrary to their will, are determined by the rules of bodily harm. At the same time torture (actions that may be related to prolonged deprivation of human food, drinking or heat, keeping it in harmful health conditions, forensic expert determines whether the indicated actions on human health). An example of questions regarding the appointment of a forensic medical examination to determine the severity of bodily harm:

- (1) what degree of severity of the sign has each of the injuries sustained by the victim?
- (2) which of the injuries is dangerous to life at the time of their infliction?
- (3) are life-threatening injuries sustained by the victim and, if so, what is their danger?
- (4) what consequences for the health of the person led to the damage done in their totality, and what are the consequences of each of them?
- (5) has there been a disadvantage in the provision of hospital care to the victim that caused the damage to him, and if so, what is the degree of gravity of these injuries and what caused them?
- (6) is the disability of a person standing and what is its size?
- (7) what is the mechanism of damage to the face of a person and whether such damage is irreparable?
- (8) are there traces of the victim's body that indicate repeated and prolonged pain, and if so, what is the mechanism for creating such traces and their limitation?
- (9) did the actions related to the continued deprivation of victim's food, drink, sleep, heat in the conditions he reported during the interrogation influenced the victim's health and how exactly? (Goncharenko and Gora 2015).

During the investigation of torture, a forensic medical examination of material evidence (forensic immunological examination) is conducted when various objects and biological origin (blood, hair, saliva, urine, sweat and human tissues, etc.) and various objects (clothing, weapons, tools for injuries, vehicles, etc.), in which traces of biological origin are detected. In accordance with established Rules for conducting forensic medical examinations, forensic medical examination of evidence is carried out at the branches of forensic medical immunology of the Forensic Medical Examination Bureau, as well as forensic medical examination on a business basis in accordance with the Law of Ukraine 'On Forensic Examination' (Instruction on conducting forensic medical examination 1995). Within the forensic examination of material evidence, the following types of research are performed: the determination of hair belongings, secretions, blood and other human tissues; the establishment on the tools of the task of injury, as well as in the underlying micronutrients of blood and micronutrients, with the definition of their species, group and organ-tissue affiliation.

It should be noted that forensic blood tests play an important role in pre-trial investigations in criminal proceedings against torture. Blood traces of the victim can be detected at the scene of the event, on the suspect, on his clothes, on special means or other subjects. Each trace of blood can indicate the mechanism of its formation and thus to some extent reflect events and circumstances mechanism. Blood's traces can undergo changes, spoil, destroy deliberately interested persons, and therefore the detection and study of such traces should preferably be carried out with the assistance of a specialist in the field of forensic medicine.

During the forensic immunological examination in the investigation of this category cases are investigated: objects, things, clothing with traces of blood, saliva, other secretions of the human body. These objects can be detected during the review of the place of the event, the review of things and subjects, exploration. Due to the specificity of the traces of biological origin and their ability to self-destruct, qualified preliminary investigations, fixation and proper removal of such objects at the site of the event of torture, as well as the correctness of packaging, the conditions for the preservation of material evidence, their referral for expert studies are of great importance. Detected, seized and recorded traces are further investigated, conducting a number of examinations, namely: forensic immunological, forensic cytological, genotyposcopic, human hair research.

Here is an example. Victim of law enforcement in 2015 in Kiev became a man M. who was taken to the police department for the management of natural needs in an improper place. For three days law-enforcers have knocked out from him a confession of a number of crimes that he did not commit. When all the documents required to sign the police were issued, the man was allowed to leave the office. As a result, he received an 'ambulance' from the injuries to the hospital, where he spent a week. Doctors and medical experts have found numerous bruises, scratches and hematomas.

While inspecting the place of torture, M. in the office of one of the law enforcement officers found blood on the stalk of the chair. As a result of the forensic examination it was confirmed that the blood belongs to the victim M. (Zamnius *et al.* 2015). In accordance with the requirements of the criminal procedure law an investigator in a criminal proceeding during a pre-trial investigation what is connected with torture is required to apply to an expert for conducting forensic psychiatric examination regarding the determination of the suspect's mental condition in the presence of information that raises doubts about its adequacy (Item 3 of Part 2 of Article 242, Article 509 of the Criminal Procedure Code of Ukraine).

During the investigation of torture committed by police officers, it sometimes happens that there is a need for a psychiatric first and then psychological examination. Such a variant is possible in cases where forensic psychiatric examination gives grounds for a positive conclusion about the person's sense of dignity, but there are doubts about the possibility of a person due to its individual peculiarities to adequately perceive the situation and actions of other persons. The question is solved in a similar way when the forensic psychiatric examination establishes the absence of a pathological affection in the person in the past, but its actions in the state of the physiological affection are not discounted. Forensic psychiatric examination is a scientific and practical study carried out by a decision of the authorized bodies or, by a court order, by a forensic psychiatric expert in order to answer questions arising during the conduct of administrative, criminal and civil cases concerning the mental state of a person (Goncharenko and Gora 2015).

The objects of forensic psychiatric examination in criminal proceedings related to torture by police officers are: suspects who have doubts about their psychological integrity during the investigation, as well as defendants and defendants, in respect of which the investigating authorities and the court have doubts about their sanity or opportunities for mental health to participate in investigative actions or court sessions; witnesses and victims, in respect of which the investigation authorities have doubts about their psychological integrity; victims, concerning which the question of the relationship between changes in their mental state and the crimes committed against them is solved. Experts conducting an outpatient examination, if it is impossible to answer all the questions posed

to them, substantiate the conclusion about the necessity of conducting of in-patient expertise. Stationary forensic or forensic psychiatric examination is appointed if there is a need for a long-term observation or examination of a person with an appropriate examination. The in-patient examination is carried out in an expert institution (unit) with a separate maintenance of persons who are staying (or not) in custody. During the on-site examination, in the presence of medical indications, persons using the appropriate state of treatment methods and studies are permitted by the Ministry of Health of Ukraine. The term of the in-patient examination is up to 30 days. Depending on the scope and complexity of the examination, the term of its conduct may be extended by agreement with the body that appointed the examination.

The reasons for this examination are the permanent or temporary disorder of the mental activity of the non-psychotic level (so-called boundary mental disorders, mental anomalies), the essential feature of which is the quantitative restriction of the ability to realize their actions and to manage them with a qualitative preservation of the critical function of consciousness (for example, psychopathy, neurosis, physiological affect, etc.), which include psychosis. Psychosis is a result of violations in the activity of the brain, which is characterized by a mental disorder and disruption of the reflection of reality and behavior (Stepanov 2006). Remission of a police psychosis is characterized by weakness, fatigue, irritability, inability to lasting mental stress (Chervyak 2012). Among the reasons for the temporary appearance of police officers' psychosis there are mental overload, mental shock, to a lesser degree pathological intoxication, etc. Acute psychosis occurs during infectious diseases. These criteria cover all psychiatric disorders that are known to science. An example of a temporary, painless change in the psyche can be the state of affection (strong emotional excitement). Scientists also use the notion of 'another painful state of the psyche'. To such a disorder of mental activity include the most severe forms of psychopathy, for example, the effects of craniocerebral injury, etc. (Veresha 2015).

In this case, you must contact the Ministry of Internal Affairs's Department of Health for the availability of medical documents which indicate receipt of craniocerebral traumas by the police during the service, or stay in the area of the Anti-terrorist operation, etc. The annual results of testing a policeman from a psychiatrist are also the subject of research. At the same time, it's important to remember that in situations where torture by a policeman is committed with signs of a mentally ill person with signs of remission, in some cases a psychological and psychiatric examination, but not forensic psychological, should be prescribed, since remission is only a temporary improvement in a mentally ill state but not recovery in the presence of psychosis. Academician S. Maksimenko, studying mental forms, proves that consciousness and human activity always appear in their unity. This unity manifests itself in the purposeful activity of man, in its relation to others and to itself, in its various cognitive, emotional and volitional reactions. Man interacts with the environment as a holistic organism (Maksimenko 2013). Conducting a comprehensive psycho-psychiatric examination during the investigation of torture committed by a police officer allows us to resolve the issue of:

- the presence of the mental illness or disorder in suspected person, their type and influence on the management of their actions during the commission of torture;
- the presence of such a disease at the time of the examination;
- the presence of psychological affect in suspected person at the time of the torture of a state of that could affect his consciousness and activity;
- presence of suspected features that could have contributed to unlawful actions.

Here is an example that confirms this definition. On June 5, 2014, the Commissioner for Human Rights received a petition from the Central Committee about unlawful actions of the Yenakiyevo City Department of the Main Directorate of the Ministry of Internal Affairs of Ukraine in Donetsk Oblast. The appeal noted that on May 13, 2014, S. were arrested by criminals and taken to the Yenakiyevo City Department, where he was subjected to torture during which he found guilty of a criminal offense to which he was not involved. As a result of the verification, the fact of torture by the employees of Yenakiyevo City Department was confirmed. In the process of studying personal cases of law enforcement officers, it was discovered that one of them had previously been registered with a psychiatrist as being inclined to psychosis, the other was repeatedly subjected to disciplinary punishment for displaying rudeness against citizens (Annual report of the Ukrainian Parliament Commissioner 2015). During the inspection of the scene, in addition to traces of biological origin, evidence of torture committed by police may include traces of fingers, shoes, tools of torture, etc. Therefore, their research requires the use of special forensic knowledge in the form of forensic forensic examinations. It was established that investigators were often assigned the following types of forensic examinations, such as dactyloscopic examination of the traces of hands, which were discovered on special means used for torture, tracological examination of traces of a victim's footwear detected in the office of law enforcement officers who used torture and the victim actively resisted.

It was also established that for the sake of torture, law enforcement officers falsified documents, for example, made a record of detention (without the indication of place and time) immediately after committing a crime, signing victims of the protocol under the influence of torture, confessions in the commission of a crime, etc. In this case, it is necessary to conduct a technical and forensic examination of the study of the details of the document (manuscripts, signatures, seals, stamps with registration, etc.), and its material substance (documents of the document), as well as handwritten and authoritative examinations on the identification of the creator of the handwritten text and signatures (detention protocols, interrogation protocols, etc.).

Such a need arose during the investigation of torture committed by employees in various regions of Ukraine for numerous violations of the above-mentioned requirements of procedural legislation that were found, in particular, by the results of proceedings Commissioner for violations of human rights and freedoms in the activities of employees of the Ministry of Internal Affairs of the Sykhiv district of Lviv, Central district of the city of Nikolaev, Bila Tserkva, Kyiv region during pre-trial investigations of criminal proceedings. Thus, investigators of the Sikhivsky district police department of Lviv did not indicate either the place or the time of actual detention in any of the 24 protocols of detention studied contrary to the requirements of Part 5 of Art. 208 of the Criminal Procedural Code of Ukraine. In the Bila Tserkva City Department of the Main Directorate of the Ministry of Internal Affairs of Ukraine in the Kyiv region 31 protocols of detention were investigated on suspicion of committing crimes. 19 protocols do not specify the place of detention, 2 protocols do not indicate the actual time of detention, 5 protocols do not indicate any place or time of detention. 20 protocols of detention on suspicion of committing crimes were investigated in the Central Rayon of Mykolaiv.

In 8 protocols there is no place of detention, in one protocol there is no actual detention time. According to the statement of suspicion Z. employees of the Sikhivsky district department of the city of Lviv were detained on July 3, 2014 at 13:35 at the place of the crime. In the Logbook of deliverables, visitors and invitees it is noted that Z. from 16:10 to 17:40 and from 19:05 to 21:30 was in the district department as an invited employee. But according to the detention protocol drawn up by the investigator, Z. was detained at the office of the investigator at 18:40. That is, at a time when there was no detainee in the district department in accordance with the accounts. The investigator has increased the procedural deadlines for holding detained for more than 5 hours by the introduction of contradictory false information. This creates an alibi for law enforcement to establish the time of torture (Ignatov2007).

So, according to Art. 84 of the Criminal Procedure Code of Ukraine the expert's conclusion is determined by one of the main sources and methods of obtaining evidence on the basis of which the investigator, the prosecutor, the investigating judge and the court determine the presence or absence of facts and circumstances that are relevant for the adoption of a correct and well-founded decision in the case. Consequently, the conclusion of the forensic examination is the written statement by the expert of the information about the circumstances relevant to the case, established by the expert on the basis of his special knowledge and obtained as a result of the investigation of materials of the case, which is based on the task formulated in the court decision or the decision of the investigator on the appointment expertise (Vasiliev 1971). Consequently, many criminal scientists, in particular V. Goncharenko, N. Klymenko and others propose to evaluate the evidence of the conclusion of forensic examination in two directions: the scientific validity of the conclusion and the evidential value of the expert's conclusions (Goncharenko and Gora 2015; Goncharenko and Romanovskaya 2013; Goncharenko 1980; Didkovskaya *et al.* 1997).

Considering the expert's conclusion as a means of proof, one must proceed from the assumption that its value in the process of proof is determined by the actual data constituting its content. As a result of the analysis of the special literature, the actual data, which constitute the content of the expert's conclusion, are derived from three interrelated but not homogeneous sources. One of them is the background data, which includes specific cases and objects provided by an expert investigator and a court. Any expert research begins with finding out the tasks, studying the output data and objects. The scope and content of the factual data obtained by the expert on this complex in its structure of the source, determine the direction of research, the selection of methods and tools for analysis and comparison of the objects under study. From the perfection of methods and used devices, the correctness of their application depends on the completeness and accuracy of the selected properties and characteristics of the phenomena studied, which constitute the actual basis of final conclusions. Applied methods are the second source of information in the expert's opinion. The main source of information is the expert himself. The expert himself, his special knowledge and experience, is the main source of the original data, which makes the actual data obtained from the above primary sources generalized, undergo mental evaluation and are formed in the form of final conclusions about the facts, the establishment of which was the task of the examination (Orlov 1985). At the same time, Orlov noted that the expert's report, like any other evidence, could be questionable or

even incorrect for various reasons. The expert may be given incorrect output or false objects. The methodology applied by the expert may not be reliable enough. In addition, an expert, like all people, is not immune to mistakes that, although occasionally, occur in expert practice. Therefore, the expert's opinion, as well as any other proof, must be subjected to a thorough, comprehensive and critical assessment. Consequently, expert opinions are subject to assessment by a person who conducts an investigation on a general basis (Katerinchuk 2009).

Some scientists point out that the evidence of the expert's conclusion depends on the logical form of the conclusion: the conclusion about the presence of a particular fact or circumstance has more probative value than the conclusion about the possibility of their existence. That is, the meaning of an expert's conclusion cannot be considered separately from other evidence, it is determined only in the context of a particular case and other evidence gathered from it. The set of available evidence may be relevant for the decision of the investigator (court) only when this aggregate in its final form makes it impossible for the additional versions and other statements, that is, a certain conclusion is the only and cause-based (Kovalenko *et al.* 2013).

Other scientists define the evidence of the results of the examination as a form of interim and final conclusions. Thus, the use of the categorical conclusion of the expert, which established the nature and essence of the object, which is evidence in the case, usually does not pose any particular difficulties. In this case, the investigator or the judge, having verified the substantiation of the results of the examination, is able to use them in full to establish the circumstances to be proved. However, in practice, difficulties arise when the investigator or the court establishes the evidentiary value of alternative, probable and conditional expert opinions (Rabinovych 2018). In the course of the study, it was found that they had to face some problems during the appointment of forensic examinations in the course of investigating torture committed by members of the National Police. A survey conducted by the investigating prosecutor's office revealed: the inappropriateness of objects aimed at examination, due to improper extraction and packaging of material evidence, as this is not facilitated by the police (66,8%); the biggest problem in appointing forensic examinations is the impossibility of obtaining results in the shortest possible time (91,1%); 56% of respondents consider the prohibition by the Criminal Procedure Code of Ukraine to conduct an examination before entering data on a crime into the Uniform Register of Pre-trial Investigations as one of the problems in the appointment of forensic examinations.

Conclusions

Authors proposed the following recommendations:

- (1) in order to remove and direct evidence in due time in the examination, to allow the appointment of forensic examinations before entering information into the Uniform Register of Pre-trial Investigations and to make amendments to Part 2 of Art. 242 of the Criminal Procedural Code of Ukraine paragraph 6 of this content: the examination is carried out for crimes committed by law enforcement officials before the introduction of information into the Uniform Register of Pre-trial Investigations;
- (2) to develop special methodological recommendations for carrying out joint trainings with investigators and experts on the review of the place of the event, the rules for the seizure and packaging of material evidence and the rules for the preparation of forensic examinations, and for ensuring the exchange of experience between the indicated subjects.

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