

ABSTRACT

By the Decree of the President of Ukraine No. 64/2022 dated February 24, 2022, in connection with the military aggression of the Russian Federation in Ukraine, a state of war was declared. The imposition of a state of war necessitated certain amendments to the Criminal Procedure Code of Ukraine. These changes pertained to Chapter 18 of Section II, regulating issues of preventive measures and detention of individuals, as well as Section IXI, which governs the special regime of pre-trial investigation and judicial consideration during a state of war. This situation led to changes in the regulation of virtually all aspects of societal life, including criminal justice. It posed a challenge to ensuring the enforceability of responsibility for committed criminal offenses while ensuring the safety of individuals involved in criminal proceedings. In order to adapt the current criminal procedural legislation to the current legislative requirements, several laws were enacted, addressing various aspects of criminal proceedings, including the issue of taking preventive measures. This makes the research topic relevant and discussed in the academic community.

This article is dedicated to the analysis of such aspects: conditions under which the state can refuse to guarantee the rights and freedoms of a person under the Convention for the Protection of Human Rights and Fundamental Freedoms during a state of war; changes introduced to the Criminal Procedure Code of Ukraine regarding the use of preventive measures during a state of war. The system of preventive measures defined in Article 176, paragraph 1 of the Criminal Procedure Code, includes measures such as personal recognizance, bail, detention, and house arrest. The main purpose of implementing these preventive measures is to ensure compliance by suspects or accused individuals with the requirements placed upon them within the framework of criminal proceedings, as well as to prevent possible unlawful influence on the investigation.

Keywords: *preventive measures, detention, arrest, state of war, house arrest.*

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FEATURES OF EXAMINATION OF A CORPSE DURING THE INVESTIGATION OF MALICIOUS FAILURE TO FULFILL DUTIES OF CARE FOR A CHILD OR A PERSON UNDER GUARDIANSHIP OR CARE ESTABLISHED

Олександр Кривопуск, Ольга Олійник (Хлинцева). ОСОБЛИВОСТІ ПРОВЕДЕННЯ ОГЛЯДУ ТРУПА ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛІСНОГО НЕВИКОНАННЯ ОБОВ'ЯЗКІВ ПО ДОГЛЯДУ ЗА ДИТИНОЮ АБО ОСОБОЮ, ЩОДО ЯКОЇ ВСТАНОВЛЕНА ОПІКА ЧИ ПІКЛУВАННЯ. Стаття присвячена дослідженню тактичних особливостей проведення огляду трупа під час досудового розслідування злісного невиконання обов'язків по догляду за дитиною або особою, щодо якої встановлена опіка чи піклування. Автором детально розглянуто та конкретизовано цілі і завдання проведення слідчої (розшукової) дії в контексті розслідування злісного невиконання обов'язків по догляду за дитиною або особою, щодо якої встановлена опіка чи піклування. Розкрито питання взаємодії слідчого та інших учасників проведення огляду, зокрема судово-медичного експерта. В роботі обґрунтовано наголошується на необхідності

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залучення спеціалістів з різних галузей знань, для проведення огляду трупа в ході розслідування злочинів передбачених ст. 166 КК України. В статті запропоновано авторський підхід до підготовчого етапу проведення вказаної слідчої (розшукової) дії.

На підставі аналізу матеріалів кримінальних проваджень встановлено місця проведення огляду трупа, притаманні розслідуванню злочину, передбаченого ст. 166 КК України. Крім цього, в статті наведено перелік технічних засобів, які використовуються в ході проведення слідчої (розшукової) дії, особливості виявлення, фіксації та вилучення слідів, які окремо, або в своїй сукупності можуть свідчити про вчинення злісного невиконання обов'язків по догляду за дитиною або особою щодо якої встановлена опіка чи піклування. Під час дослідження автором було використано діалектичний, формально-логічний, системно-структурний методи.

Ключові слова: *слідча (розшукова) дія, огляд, огляд трупа, досудове розслідування, злочин, дитина, опіка, піклування, батьки, опікуни, піклувальники.*

Relevance of the study. In the conditions of modern reality, characterized by economic instability, which is caused by the armed aggression of the Russian Federation, there is a rapid increase in crime in the country. Protection of the rights of children and persons who, due to physical and/or mental disabilities, require special care and attention remains a priority direction of the state policy of Ukraine.

The facts of malicious non-fulfillment of duties to care for a child or a person for whom guardianship or care has been established in today's conditions remain an actual problem, as evidenced by statistical data, where according to the information reflected in the Unified Report on registered criminal offenses and the results of their pre-trial investigations provided by the Office of the General Prosecutor of Ukraine, in 2019, 1,270 criminal proceedings were initiated, in 2020 – 1,322, in 2021 – 1,166, in 2022 – 759 criminal proceedings on the grounds of a criminal offense provided for in Article 166 of the Criminal Code of Ukraine [1]. At the same time, the number of indictments sent to the court remains insignificant, in particular, in 2019, 77 indictments were sent to the court (6.06 %), in 2020 – 60 indictments (4.54 %), in 2021 – 43 indictments (3.69 %), in 2022 – 33 indictments (4.35 %). Thus, the average rate of completion of the pretrial investigation in the form of an appeal to the court with an indictment is 4.66 % of the total number of registered criminal offenses qualified under Art. 166 of the Criminal Code of Ukraine.

In our opinion, it is appropriate to include a set of factors as the main reasons for this situation, in particular the imperfection of domestic legislation, which is expressed in the absence of a legally established concept of "malice" in the context of malicious failure to fulfill the duties of caring for a child or a person for whom guardianship or care was established. In addition, the interaction of pre-trial investigation bodies with representatives of authorized bodies, which are entrusted with the functions of protecting the rights of children and persons in respect of whom guardianship or care has been established, remains a problematic issue, as well as the lack of methodological support and scientifically based recommendations on increasing the effectiveness of individual investigative (search) actions as well as a general pre-trial investigation of malicious failure to fulfill duties to care for a child or a person in respect of whom guardianship or care has been established. Since the crimes provided for in Art. 166 of the Criminal Code of Ukraine can be attributed to those committed in conditions of non-obviousness, in conditions of insufficient information, investigators who conduct primary investigative (search) actions are assumed to have false qualifications. Separately, among the negative reasons that affect the quality of the pre-trial investigation, the low professional level of investigators who carry out primary investigative (search) actions based on the facts of reports of information that may indicate malicious failure to fulfill the duties of caring for a child or a person should be singled out. In respect of which custody or guardianship is established.

In turn, the review plays an important role in the course of the pre-trial investigation, since the informativeness of the investigative review is much higher than other investigative actions, for example, search, seizure or reproduction of the situation and circumstances of the event [2, p. 327].

In cases of malicious failure to fulfill the duties of caring for a child or a person for whom guardianship or care is established, the corpse of the victim can, without exaggeration, be considered one of the main, and sometimes the only, source of forensically significant information that allows conclusions to be drawn about the way the commission of the crime, its mechanism and establish the qualifying features that allow to bring the guilty persons to justice and to qualify the criminal's actions according to Art. 166 of the Criminal Code of Ukraine.

The course of the entire further investigation depends on establishing the cause of the victim's death.

Recent publications review. The problems and scientific substantiation of the tactical methods of conducting an investigative examination, in particular the examination of a corpse, were considered in their scientific studies at various times by the following outstanding scientists: V. Shepitko, M. Saltevskiy, A. Volobuev, K. Chaplinskyi, N. Pavlova, V. Kolmakov, I. Pyrig, O. Kurman, O. Musienko, T. Okhrimchuk, T. Pazynych, M. Yefimov, G. Badniak and a number of other domestic and foreign forensic scientists.

Among the scientists who were directly involved in the study of the peculiarities of the examination of the corpse of minors and/or minors, it should be noted the works of T. Ganja, O. Luchko, G. Bidnyak, I. Pyrih, etc. However, in the works of these scientists, attention is mostly focused on the problems of technical support for conducting the specified investigative action, or the problems are highlighted from the point of view of other branches of law, namely the criminal process. Thus, some issues of conducting an examination of a dead body during the investigation of the crime provided for in Art. 166 of the Criminal Code of Ukraine, require additional research in connection with the insufficient coverage of this problem, the change in the methods of committing these criminal offenses and the constant reformation processes of law-making activity taking place in our country, also in view of the state of war.

The article's objective is to determine the tactical features of conducting an investigative (search) action, an examination of a corpse, ways of improvement during the investigation of malicious failure to fulfill the duties of caring for a child or a person for whom guardianship or guardianship has been established.

Discussion. The most widespread and weighty in terms of informativeness investigative (research) action is a review. This action is carried out, as a rule, at the initial stage of the investigation, and the success of the entire subsequent investigation depends on its effectiveness [3, p. 220].

According to the approach proposed by M. Saltevsky, an investigative review is a procedural activity of authorized persons to apply methods and technical means of forensic tactics to identify, record research and extract information from material sources, as well as establish other circumstances that are relevant to the case [4, p. 220]. According to the position generally accepted in scientific circles, which is supported by leading forensic scientists, the examination of a corpse is one of the types of investigative examination. So, for example, V. Shepitko proposes the definition of an examination of a corpse as an investigative action carried out by an investigator or a person who conducts an inquiry at the place where the corpse was found in order to identify signs that allow to establish the identity of the victim, the place, time, circumstances and causes of death, as well as to find signs that indicate a possible criminal [5, p. 161].

Without entering into a scientific discussion about approaches to the definition of the concept of examination of a corpse in the science of forensics, we suggest taking as a basis the definition proposed by V. Shepitko and move on to consider the tactical features of the investigative (search) action, taking into account the specifics of the issue we are investigating.

On the basis of the conducted study of the materials of criminal proceedings, we have established that the consequence of the malicious failure to fulfill the duties of caring for a child or a person for whom custody or guardianship has been established, in the vast majority (75.00 % of cases) is characterized by the death of the victim [6, p. 451].

In this connection, special attention should be paid to the peculiarities of conducting a corpse examination. The specified investigative (search) action has its own characteristics and is regulated by a separate norm of the Criminal Procedure Code, namely Art. 238 of the Criminal Procedure Code of Ukraine, according to which the examination of the corpse by the investigator, prosecutor is carried out with the mandatory participation of a forensic medical expert or a doctor, if it is not possible to involve a forensic medical expert on time [7].

Having read the materials of the criminal proceedings on the malicious failure to fulfill the duties of caring for a child or a person for whom guardianship or custody has been established, it can be said that in most cases the examination of the corpse is carried out at the place of residence of the victim, namely in 68 % of the proceedings. In 16 % of cases, the examination of the corpse is carried out at the scene, outside the victim's permanent residence – in places of mass recreation on the water (public beaches, shores of reservoirs, other places of recreation and the territory adjacent to them). Somewhat less often, however, in 11 % of cases, the examination of the corpse is carried out on the territory of the home ownership of the

victim's permanent residence (outbuildings, open areas of the area on the territory of home ownership, etc.). In 5 % of cases, the examination of the corpse is carried out in health care facilities or ambulances. By citing the indicated statistical data, we mean that the place of death is the place of examination.

The examination of the corpse should be carried out directly at the place of its discovery, because otherwise the connection between the elements of the scene, the environment in which it was discovered, and the posture of the corpse, corpse phenomena and other signs is broken [8, p. 110].

According to generally accepted scientific approaches, as well as any investigative (search) action, scientists divide the examination of a corpse into three stages: preparatory, working and final. Taking into account the peculiarities of the issue we are investigating, we propose to investigate the peculiarities of the preparatory stage, which are inherent precisely during the investigation of the crime provided for in Art. 166 of the Criminal Code of Ukraine. First of all, it must be taken into account that the malicious failure to fulfill the duties of caring for a child or a person in respect of whom guardianship or care has been established belongs to the category of non-obvious crimes, and the investigator, before arriving at the scene of the incident, is in conditions of lack of information. Thus, at the preparatory stage, it is advisable for the investigator to carry out a set of actions aimed at:

- involvement in investigative (search) activities as a forensic medical expert. The obligation to involve a forensic medical expert, in addition to the norms of the Code of Criminal Procedure, is regulated by the joint Order of the Ministry of Internal Affairs, the Ministry of Health and the Office of the Prosecutor General No. 177/450/46 dated 09.03.2022 "On approval of the Procedure for interaction between bodies and units of the National Police of Ukraine, health care institutions and by the prosecutor's office of Ukraine when establishing the fact of a person's death during martial law on the territory of Ukraine";

- obtaining information by interviewing witnesses, the applicant or other persons who are at the place of the inspection regarding the situation and the reasons for contacting the law enforcement agencies;

- on the basis of the analysis of the received information, versions of the committed crime are put forward, conclusions are made about the way the crime was committed, and a decision is made about the feasibility of involving other specialists in the examination of the corpse (State Scientific Research Expert Forensic Center experts, employees of the Ministry of Health, etc.);

- drawing up an inspection plan, determining the limits of the investigative (search) action, choosing inspection methods and using technical means;

- distribution of roles and definition of tasks of each participant of the Investigative and operational group and persons involved in the examination of the corpse.

Yes, according to T. Ganja, the transitional border between the preparatory and working stages of the review is reconnaissance. The latter allows to correctly distribute the roles of each of the participants of the noted investigative (search) action and provides an opportunity to preliminarily compare the information received during the investigative (search) action with the real situation [9, p. 119].

We suggest that you pay attention to the methods of conducting a corpse examination. The choice of the most appropriate method, its sequence directly depends on the place where the corpse was discovered and the specific investigative situation that developed at the time of the investigative (search) action. On the basis of the analysis of the materials of criminal proceedings and after examining the approaches of scientists in the case of discovery of a corpse at the place of residence (i.e. in apartments, residential premises of private households), i.e. in the case of an opportunity to establish the limits of the investigative (search) action, it is advisable to use the concentric method of conducting an examination. The use of this method allows to ensure the preservation and completeness of the display of the trace picture at the scene of the incident.

In cases where a corpse is discovered in places where it is impossible to establish clearly defined boundaries of the examination, or to establish the exact location of the event, in our opinion, it is advisable to use eccentric or frontal methods of examination. Such places include the territories of private households where the corpse was found, the shores of reservoirs, beaches or other places of recreation.

Having read the materials of criminal proceedings of the studied category, it is possible to state the absence of a single approach to the procedural methods of fixing the examination of

the corpse. Some investigators conduct an examination of the corpse as part of the inspection of the scene of the incident, without drawing up a separate report. However, the majority of investigators, guided by the norms of part 2 of Art. 238 of the Criminal Procedure Code of Ukraine, which states that the examination of the corpse can be carried out simultaneously with the inspection of the scene, housing or other possessions of a person in compliance with the rules of the Criminal Procedure Code on the inspection of a person's housing or other possessions [7] separate the examination of the corpse into a separate investigative (search) action, based on the results of which a separate protocol is drawn up. Thus, in most of the materials of criminal proceedings examined by us, namely in 76.85 %, an examination of the scene and an examination of the corpse are carried out separately.

Moving on to the examination of the working part of the investigative (search) action, based on the analysis of the descriptive parts of the protocols of the examination of the corpse, according to the facts of the commission of the crime provided for in Art. 166 of the Criminal Code of Ukraine, it is worth noting that the protocol displays information about:

- location of the corpse and its position, location of limbs, gender; questionnaire data;
- clothes that are on the corpse and in the case of jewelry. When describing clothes, you should focus on fixing the presence of traces of blood, semen, urine, saliva, feces, etc. on the clothes, because their type, shape, direction, size, color, location, degree of penetration of the fabric by them allows you to reach certain conclusions. In particular, traces of sperm can indicate the presence of sexual intercourse; discharge of feces, urine is characteristic of asphyxiation; the location and direction of blood traces may indicate the position of the body at the time of injury; strong blood seepage of individual parts of clothing and the considerable length of such flows indicate a long stay of the body in a certain position [10, pp. 112-113];

- information about the conjuration of the corpse and the presence of corpse marks on the body. The process of detecting corpse spots refers to the dynamic stage of the survey, which consists in pressing open areas of the terrain (using a spring dynamometer) and setting the time after which the corpse stains disappear and regain their color. Identification of corpse stains and their description is carried out by a forensic medical expert. At the same time, the protocol should reflect the exact time of application of the dynamometer and what effort was used for this (the unit of measurement in this case is the kilogram per square centimeter of the body). This will allow, taking into account the surrounding environment (time of day, ambient temperature, room humidity, etc.), to establish the time of death as accurately as possible;

- the general constitution of the corpse, its body structure, special signs. When describing special signs, you should also indicate: the nature, name, location, shape, size, color, content of the tattooed picture or inscription. Accordingly, it is necessary to describe injuries and various traces found on clothes or shoes [11, p. 132];

- body length and weight, head circumference, chest circumference, abdominal circumference;

- the presence or absence of physical injuries, the facts of detection of deformation (bone fractures) are also recorded;

- the presence of traces of blood or other objects of biological origin on the bed of the corpse or in its immediate vicinity (saliva, vomitus, etc.);

- other information depending on the situation and investigative situation.

After displaying in the examination protocol general information about the sex, age, questionnaire data, clothing of the corpse, the body is examined from top to bottom (from head to feet), while first examining those parts of the body that at the time of the examination are the front part in relation to the investigator and a forensic medical expert. After inspecting the front part of the body and the sides, the corpse is turned over in the presence of the inspection participants to inspect the rear part, which ensures the principles of sequence and systematicity of the investigative action.

In the event that physical injuries are detected on the corpse, they are subject to a detailed description, while indicating the location of the injuries and their type (burns, open fractures of the limbs, sores, etc.); size, color and shape of the injury. If the injuries are cuts to the skin, the length of the cut and the depth of the skin damage are indicated.

It is advisable to record the entire process of examining the corpse with the help of a video recording and take separate photographs in compliance with the rules of forensic photography and video recording.

After the examination, the corpse is sent to the appropriate expert institutions for forensic medical examination based on the decision of the investigator.

Conclusions. On the basis of the above, it can be concluded that the results obtained during the examination of the corpse, during the pre-trial investigation of the malicious failure to fulfill the duties of care for a child or a person in respect of whom custody or guardianship has been established are one of the main sources of evidentiary information. Thanks to a properly conducted examination of the corpse, the investigator puts forward substantiated versions of the committed crime, draws conclusions about the circumstances and conditions of the committed criminal offense and the methods of its commission. The information obtained during the examination of the corpse allows to avoid mistakes in the qualification of the crime and to initiate investigative (search) actions at the further stages of the pre-trial investigation.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The article is devoted to the study of the tactical features of conducting an examination of a corpse during a pre-trial investigation of malicious failure to fulfill the duties of caring for a child or a person for whom guardianship or custody has been established. The authors have considered in detail and specified the goals and objectives of the investigative (search) action in the context of the investigation of malicious failure to fulfill the duties of caring for a child or a person in respect of whom custody or guardianship has been established. The issue of the interaction of the investigator and other participants in the examination, in particular the forensic medical expert, was revealed. The work reasonably emphasizes the need to involve specialists from various fields of knowledge to conduct an examination of a corpse during the investigation of crimes provided for in Art. 166 of the Criminal Code of Ukraine. The article offers an authors' approach to the preparatory stage of conducting the indicated investigative (search) action.

On the basis of the analysis of the materials of the criminal proceedings, the places of examination of the corpse, inherent in the investigation of the crime provided for by Art. 166 of the Criminal Code of Ukraine. In addition, the article provides a list of technical means used in the course of an investigative (search) action, features of detection, fixation and removal of traces, which individually or in their entirety may indicate the commission of a malicious failure to fulfill the duties of caring for a child or a person in respect of whom guardianship or care has been established. During the research, the author used dialectical, formal-logical, systemic-structural methods.

Keywords: *investigative (search) action, examination, examination of a corpse, pre-trial investigation, crime, child, guardianship, care, parents, guardians, custodians.*