

SPECIFICS OF ORDERING A FORENSIC MEDICAL EXAMINATION IN THE INVESTIGATION OF PROFIT-DRIVEN VIOLENT CRIMES

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Annotation. The article is devoted to the study of the specifics of preparing materials and ordering a forensic medical examination during the investigation profit-driven violent crimes.

This paper outlines the types of forensic medical examinations that may be appointed during the investigation of profit-driven violent crimes, contingent on the circumstances of the specific criminal case. These include: the examination of corpses in cases of violent death; the examination of victims, accused persons, and other individuals; the examination of physical evidence; and examinations based on criminal case materials.

The article specifies the objectives of forensic medical examinations for both living individuals and corpses in investigations of profit-driven violent crimes. These objectives include: establishing the cause of death; determining the degree and nature of bodily harm; identifying the mechanism of injury; determining the weapon, manner, and time of injury infliction; establishing the number of assailants involved in injuring the victim; and identifying the origin and type of blood and other bodily fluids discovered on the victim or suspect.

The text highlights that amid the mass loss of life resulting from Russia's military aggression against Ukraine, regional forensic medical examination bureaus are unable to manage the necessary volume of expert analyses promptly and effectively on their own. This results in significant delays in completing forensic examinations. To alleviate the burden on the staff experts at these regional bureaus and to ensure the timely receipt of expert findings, it is proposed to grant private experts legislative permission to conduct forensic medical examinations of living individuals, at least for the duration of martial law in Ukraine.

The author formulates standard sets of questions to be addressed by the forensic medical examination of living persons and cadavers during investigations of profit-driven criminal offenses. It is recommended that the examination of a corpse be assigned to the forensic expert who, acting as a specialist, took part in the initial external inspection of the body at its discovery scene.

It is recommended that the investigator seek assistance from an appropriate specialist for preparing items for forensic medical examination, drafting questions for the expert, and selecting experts qualified to perform a specific expertise.

Key words: criminal proceedings, pre-trial investigation, profit-driven violent crimes, investigator, forensic expert, forensic examination, forensic medical examination, specialist.

1. Introduction.

During the investigation of profit-driven violent crimes – such as profit-driven murder (para. 6, part 2, art. 115 of the Criminal Code of Ukraine – hereinafter referred to as CC of Ukraine) and contract killing (para. 11, part 2, art. 115 of the CC of Ukraine); violent robbery (parts 2, 4, art. 186 of the CC of Ukraine); assault with intent to rob (part 4, art. 187 of the CC of Ukraine); extortion combined with violence (parts 2 and 3, art. 189 of the CC of Ukraine); banditry (art. 257 of the CC of Ukraine);


profit-driven violent seizure of a vehicle (parts 2 and 3, art. 289 of the CC of Ukraine); and unlawful imprisonment or abduction of a person (part 2, art. 146 of the CC of Ukraine) – questions inevitably arise that require the use of special knowledge in the form of a forensic medical examination.

Nevertheless, an analysis of judicial and investigative practices reveals that investigators frequently commit errors when preparing materials and appointing forensic medical examinations in cases of profit-driven violent crimes. These errors ultimately hinder the determination of crucial facts of the criminal offense. Therefore, we believe that the potential of forensic medical examinations in the investigation of these criminally punishable acts is not being fully utilized, highlighting the need to refine evidence-based forensic guidelines for the preparation of materials for these examinations.

2. Analysis of scientific publications.

The criminal procedural and forensic aspects of the appointment and conduct of forensic examinations in criminal justice have been studied by such domestic scientists as V.S. Bondar, V.H. Honcharenko, I.V. Hora, V.O. Zhuravel, A.V. Ishchenko, N.I. Klymenko, V.O. Konovalova, O.A. Kravchenko, V.K. Lysychenko, N.V. Nestor, O.V. Oderii, I.V. Pyrih, E.B. Simakova-Yefremian, M. Ya. Sehai, R.L. Stepaniuk, V.M. Stratonov, V.Yu. Shepitko, M.H. Shcherbakovskyi, et al., who have formulated the scientific and practical foundations of forensic expert activity.

Some general aspects of preparing materials and appointing forensic medical examinations are covered in several key regulatory documents. These include the Instruction on Forensic Examinations and Expert Studies (approved by the Ministry of Justice of Ukraine, Order No. 53/5 of 08.10.1998) [1], the Instruction on Conducting Forensic Medical Examinations (approved by the Ministry of Health of Ukraine, Order No. 6 of 17.01.1995) [2], and the Rules for Forensic Cytology Examinations (also approved by the Ministry of Health, Order No. 6 of 17.01.1995) [3]. Nevertheless, in light of current realities, many issues concerning the specifics of preparing materials and appointing forensic medical examinations in the investigation of profit-driven violent crimes remain under-researched or controversial, which underscores the relevance of the proposed research.

 **3. The purpose of the article** is to improve the forensic recommendations regarding the preparation of materials and the appointment of a forensic medical examination during the investigation of profit-driven violent crimes, adapted to the modern needs of practice.

4. Review and discussion.

Article 1 of the Law of Ukraine “On Forensic Examination” defines a forensic examination as an investigation of objects, phenomena, and processes, conducted on the basis of special knowledge in science, engineering, art, or crafts, with the aim of providing an opinion on issues that are or will be subject to judicial review [4]. Proceeding from this definition, a forensic medical examination may be characterized as an investigation based on specialized medical knowledge of physical objects that contain information regarding circumstances to be established within a criminal proceeding.

A review of judicial and investigative practices indicates that during the investigation of profit-driven violent crimes, the following forensic medical examinations may be ordered, contingent on the specifics of the individual case: autopsies in cases of violent death; examination of living victims, accused persons, and other individuals; analysis of physical evidence; and documentary examinations based on case files.

In the criminal proceedings mentioned, the objectives of a forensic medical examination of a living person include: determining the extent and character of bodily harm; establishing the mechanism of injury; identifying the weapon, manner, and time of injury infliction; establishing the number of assailants; and determining the origin and type of blood and other bodily fluids discovered on the victim or suspect. While the appointment of a forensic medical examination of a living person is typically at the discretion of

the investigator, it becomes mandatory when it is necessary to establish the severity and nature of bodily injuries, in accordance with para. 2, part 2, art. 242 of the Criminal Procedure Code of Ukraine [5].

It is crucial for the investigator to recognize that delaying the appointment of a forensic medical examination of a living person can complicate or even prevent the establishment of key circumstances of the criminal offense. Specifically, it can hinder the determination of the age of injuries, as their traces may change or vanish over time through the healing process. Conversely, appointing the examination prematurely, such as before the victim's treatment is complete, also poses a problem [6, p. 202].

Furthermore, it is important to consider that amid the mass loss of life from Russia's military aggression against Ukraine, regional forensic medical examination bureaus are overwhelmed and unable to perform the necessary volume of expert work in a timely and effective manner [7, p. 104], resulting in significant delays. The option of commissioning private experts is currently not viable because Art. 7 of the Law of Ukraine "On Forensic Examination" stipulates that forensic medical examinations are the exclusive domain of state-specialized institutions [1]. Therefore, to alleviate the burden on state experts and to expedite the receipt of expert findings, we propose a legislative amendment to allow private experts to conduct forensic medical examinations of living individuals, at least for the duration of martial law in Ukraine.

When appointing a forensic medical examination of a living person, in addition to the victim themselves, the investigator must, if necessary, provide the expert an access to medical documents requested from the medical institution. Such records must document the victim's injuries, the course of treatment, and their health status before the injuries occurred. These may include: Inpatient Medical Card (form 003/o); Medical Card for a Day-Care Patient of a Polyclinic or In-Home Care (form 003-2/o); Outpatient Medical Card (form 025/0); Certificate of Incapacity (sick leave form); Outpatient Coupon (form No. 025-6/o); Extract from the Medical Card of an Outpatient/Inpatient (form No. 027/o); Specialist's Consultative Conclusion (form No. 028/o); Report of a Non-Occupational Injury (form No. 092/o); Ambulance Service Report Sheet (form No. 114/o) [8, p. 175], and others. Additionally, the investigator must make available to the expert any X-ray images, computed tomography (CT) scans, or magnetic resonance imaging (MRI) results in their possession.

In certain instances, the forensic medical examination can be performed based solely on an analysis of the victim's medical documents. As an example, on September 5, 2023, in case No. 752/14260/18 concerning a criminal charge under Art. 187(2) of the CC of Ukraine, the Holosiivskyi District Court of Kyiv reviewed a forensic medical expert's report. The report stated that the victim's medical records at the time of her seeking medical help showed the presence of the following injuries: a closed-head injury (concussion), bruising to the left frontal region and lower eyelids of both eyes, as well as bruises on the left shoulder and right shin. The expert noted that in accordance with clauses 4.6 and 2.3.3 of the "Rules for the Forensic Medical Determination of the Degree of Severity of Bodily Injuries" a closed-head injury (concussion), bruises on the left frontal area, and on the lower eyelids of both eyes are classified as a light bodily injury that caused a short-term health disorder for a period of more than 6 but less than 21 days. In accordance with clauses 4.6 and 2.3.5 of the "Rules..." each bodily injury – the bruises on the left shoulder and the right shin – is classified as a light bodily injury, as the restoration of the anatomical integrity of the injured areas in a normal clinical course is observed in a period exceeding 6 days. The detected injuries show no signs of being life-threatening. The nature and morphology of the detected injuries indicate that they were formed as a result of at least 4-5 traumatic impacts by blunt objects, the characteristic properties of which were not reflected in the injuries; their age could correspond to the specified time frame. Considering the localization and nature of all the injuries found on the victim, the possibility of their formation from a fall from a vertical or near-vertical body position is excluded. Given the victim's closed-head injury in the form of a concussion, the possibility of a change in the level of consciousness (up to and including its loss) after the infliction of the said injury is not excluded [9]. As is evident, the expert established facts crucial to the criminal proceeding based solely on an analysis of the victim's medical documents.

Depending on the specifics of the criminal case, the expert may be provided with interview records from the ambulance crew, the attending physician who admitted the patient, and the operating

surgeon concerning the circumstances of the victim's medical treatment, in addition to the victims' own statements.

When an investigation of a profit-driven violent crime involves procedural actions such as a physical inspection of the victim's body or an investigative experiment with their participation, the investigator should provide the forensic medical expert with the official record (protocol) of the action and any accompanying photographs. For instance, in court case No. 552/16/24, a forensic medical expert's report concluded that the testimony given by the victim during an investigative experiment was consistent with the objective findings of the forensic medical examination [10].

Forensic medical examination can also extend to the analysis of traces of blood and other human bodily fluids found on items of physical evidence. For example, in a criminal proceeding concerning criminal offenses under paras. 6, 12 of part 2 of Art. 115, part 4 of Art. 187, and part 3 of Art. 289 of the CC of Ukraine, the objects of the forensic medical examination were items with traces discovered during the inspection of the crime scene and the corpse, namely: two wood chips from the entryway handrail with traces of blood, a gauze swab with a blood washing from the floor of the landing in front of the victim's apartment door, a gauze swab with a blood washing from the hallway floor, blood scrapings from the floor and wall of the apartment, a towel found on the corpse's face, and items of clothing seized from the accused's residence, specifically: three shirts, denim trousers, a belt, and cotton trousers [11].

Besides the primary evidence, an expert may also be given the findings of prior forensic examinations. For instance, in case No. 490/541/23, a forensic report established that a blood sample from a swab taken at the crime scene (a store floor) was human. Serological analysis identified it as blood group O (containing antigen H and isohemagglutinins anti-A and anti-B) under the ABO system. This finding was then compared to a previous expert report, which confirmed that the victim also has blood group O. Therefore, the expert concluded that the blood on the swab could have originated from the victim (as indicated by antigen H) or from another individual with the same blood type [12].

The failure to obtain comprehensive evidentiary information often stems from improperly formulated questions posed to the expert. For example, in appointing a supplementary forensic medical examination in case No. 182/3496/15-k (a charge under Art. 187(4) of the CC of Ukraine), the court asked: "Is it possible to distinguish the victim's existing bodily injuries by their degree of severity, considering the testimony she gave during the investigative experiment?" [13]. In our opinion, any possible answer to such a question would lack specificity and would not be conducive to establishing the facts of the criminal offense.

According to established rules, the questions posed to an expert must meet the following requirements:

- they must not go beyond the scope of the expert's competence and must not be of a legal nature;
- they must be formulated to be definite, specific, and, if possible, concise;
- it is advisable to present the questions in a logical sequence [14, pp. 18-19].

Therefore, during the investigation of profit-driven violent criminal offenses, the following standard questions can be addressed by a forensic medical examination of living persons:

What is the severity of the bodily harm sustained by... [Name]?

What is the quantity, character, location, and origin of the injuries to... [Name]?

What kind of weapon or instrument was used to inflict the injuries on... [Name]?

How long ago were the bodily injuries inflicted on... [Name]?

In what sequence were the injuries inflicted on... [Name]?

What were the relative positions of the victim [Name] and the suspect(s) [Name] when the injuries were inflicted? Is there evidence of a struggle on the body, and where is it located?

What is the victim's [Name] degree of incapacitation? [8, p. 178].

This list of questions for the expert is not exhaustive and may be modified depending on the specifics of each criminal case.

The forensic medical examination of a corpse is ordered when investigating profit-driven violent crimes, including profit-driven murder (Art. 115(2)(6) of the CC of Ukraine), contract killing (Art. 115(2)(11) of the CC of Ukraine), and assault with intent to rob that involves grievous bodily harm resulting in the victim's death (Art. 187(4) of the CC of Ukraine) to differentiate the latter act from a profit-driven intentional murder.

Its purpose is to determine the cause of death, the weapon, manner, and time of infliction of the fatal injuries, and the number of individuals involved in the assault. This examination is also used to identify the origin and group of blood and other bodily fluids discovered on the victim's corpse or suspect. The appointment of this examination is mandatory for establishing the cause of death, in accordance with part 2, Art. 242 of the Criminal Procedure Code of Ukraine [5].

During the pretrial investigations of profit-driven murders (Art. 115(2)(6) of the CC of Ukraine) and contract killings (Art. 115(2)(11) of the CC of Ukraine), the forensic medical examination of the corpse is typically tasked with addressing the following questions:

What is the time since death and the cause of death of the victim? (For instance, in court case No. 541/1836/24, a forensic medical report on the corpse concluded that the cause of death was blunt force head trauma. This trauma resulted in hemorrhages into the soft tissues of the head and under the meninges, a skull fracture, and was complicated by cerebral edema. The expert confirmed a direct causal relationship between the observed injuries and the cause of death [15]).

Was the death a result of violence?

What was the mechanism of injury?

Are there any marks on the body that could help determine the characteristics of the weapon or instrument used?

Considering the nature of the injuries, can it be determined if they were self-inflicted? [16, p. 30].

Could the bodily injuries on the corpse have occurred under the circumstances described by [Name] during the investigative experiment? (As an example, in court case No. 541/1836/24, the forensic medical examination of the body concluded that given the nature and anatomical location of the victim's injuries, they could indeed have occurred under the circumstances that the accused described during the investigative experiment [15]).

Ideally, the forensic medical examination of the corpse should be assigned to the expert who took part as a specialist in the initial external examination of the body at the discovery scene.

Besides the body itself, the investigator should, as needed, provide the expert with pertinent documents characterizing the victim's health status before death. Such documents may include: the deceased persons medical records, health certificates, records of registration at psychiatric/neurological or substance abuse clinics, and other documents from the criminal case file [17, p. 39].

A qualified specialist can assist the investigator in determining the appropriate time to appoint a forensic medical examination of a living person or a corpse, compiling the list of materials to be provided to the expert, and formulating necessary questions based on the circumstances of the specific criminal proceeding.

5. Conclusions.

To summarize, it is clear that forensic medical examination plays a pivotal role in establishing the circumstances of a criminal offense during the investigation of profit-driven violent crimes. The

success of such examinations hinges on their timely appointment, the comprehensiveness of the materials provided to the expert, and the proper formulation of questions.

To alleviate the burden on experts at the regional bureaus of forensic medical examination and to expedite the receipt of expert findings, it is advisable that legislative permission be granted for private experts to conduct forensic medical examinations of living individuals, at least for the duration of martial law in Ukraine.

A promising direction for future research is the investigation of issues related to the preparation of materials and the appointment of other types of forensic examinations during the investigation of profit-driven violent crimes.

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