

PRESENTATION OF A CORPSE FOR IDENTIFICATION UNDER MARTIAL LAW

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*There's an answer somewhere in this case,
you just have to find it.*

Annotation. The article is devoted to the analysis of the investigative (search) action: presentation for identification of a corpse under martial law. It is noted that this type of identification has significant differences from other types, both in terms of the specificity of the object of identification, and in terms of the goals and objectives that must be achieved and fulfilled during its conduct, and therefore the procedural rules for its conduct have certain peculiarities. It is emphasized that, first of all, during the pre-trial investigation, the identification does not take place of the corpse as such, but of an unknown person whose corpse has been found, or of a person whose identity is in doubt.

It is emphasized that most often during martial law in Ukraine, an inspection of the scene of the incident is carried out, but the presentation of the corpse for identification takes second place among the most frequent investigative (search) actions.

The thesis is substantiated that in order to identify and record information about the circumstances of the commission of a criminal offense, the investigator and prosecutor conduct an inspection of the scene of the crime (Article 237 of the Code of Criminal Procedure of Ukraine). The examination of the corpse is carried out with the mandatory participation of a forensic medical expert or doctor, if it is impossible to involve a forensic medical expert in time. After the examination, the corpse is subject to mandatory referral for forensic medical examination to establish the cause of death (Article 238 of the Code of Criminal Procedure of Ukraine).

It has been proven that one of the most effective investigative (search) actions of an identification nature, the need for which may arise during the investigation of the vast majority of criminal offenses, is presentation for identification. The practical importance of this investigative (search) action has led to constant attention to it by the sciences of criminology and criminal procedure, in which the specified investigative (search) action has been considered in various aspects for a long time.

It is noted that the procedural procedure for presenting a corpse for identification is regulated by the norms of the Criminal Procedure Code of Ukraine, compliance with which is mandatory and strict. Failure to comply with the procedural rules for conducting an investigative (search) action is a violation of the law and entails its recognition as legally invalid and inadmissible.

Key words: orpse, identification, martial law, scene of the incident, environment.

1. Introduction.

The quality of criminal activity in the investigation of criminal proceedings directly depends on the completeness of legal norms and clear and specific provisions of the current Criminal Code of Ukraine on the adoption of procedural decisions aimed at prompt pre-trial investigation and trial. This provision fully applies to the conduct of investigative (search) actions, including the presentation

of corpses for identification. With timely implementation, it can be used to confirm existing evidence in criminal proceedings or to obtain new evidence, which is critically important for supporting the prosecution's version of the criminal offense or refuting such a version.

First of all, all actions to initiate a pre-trial investigation of criminal offenses are directly related to investigative (search) and covert investigative (search) actions, because they are the most effective means of collecting evidence. In addition, investigative (search) actions are the main way to collect evidence in criminal proceedings and are of increased interest to scholars on issues of regulatory and legal regulation and practical implementation. Taking into account the conditions of action of special legal regimes, in particular the war in Ukraine, traditional means of pre-trial investigation in many cases do not allow to achieve the desired result and lead to the loss of necessary evidence, and sometimes endanger the life and health of participants in criminal proceedings, which fully applies to identification in criminal proceedings.

2. Analysis of scientific publications.

Analysis of recent studies and publications focused on the consideration and solution of this problem shows that the issues of the procedural order of presentation for identification are given considerable attention in modern legal literature. The procedural and tactical aspects of presentation for identification were studied by the following scholars: Yu.P. Alenin, I.V. Basista, Goncharenko, M.V. Danshyn, A.V. Ishchenko, V.V. Kovalenko, I.I. Kogutych, N.I. Klymenko, V.V. Lysenko, E.D. Luk'yanchikov, M.V. Saltevisky, M.A. Pogoretsky, R.L. Stepaniuk, K.O. Chaplynsky, S.S. Chernyavsky, V.Yu. Shepitko, M.G. Shcherbakovsky and others.

3. The purpose of the work.

The purpose of the scientific article is to determine the possibilities of identifying deceased persons through presentation for identification and to outline the main problems along the way.

4. Review and discussion.

The presentation of a corpse for identification is carried out in compliance with the requirements stipulated in Art. 228, Art. 230 of the Code of Criminal Procedure of Ukraine. Before presenting the corpse of a person for identification, the investigator, prosecutor shall first find out whether the person who is identifying can recognize this person, question him about his appearance and features, as well as the circumstances under which he saw this person, about which he draws up a report. If the person states that he cannot name the features by which he recognizes the person, but can recognize him by a set of features, the report shall indicate by a set of features by which he can recognize the person. The presentation of a person's corpse for identification is necessarily preceded by an interrogation (people who have relatives or loved ones who have disappeared are questioned, whether they witnessed torture, executions, and so on), so it is necessary to find out: the person's last name, first name, and middle name; age; profession; external signs (height, build, color of hair, eyes, skin, etc.); when the person was last seen; how they were dressed, what things they had with them; other features of appearance (tattoos, piercings, condition of teeth, presence of dentures, postoperative scars).

Presentation of a corpse for identification is one of the means of establishing its identity. The corpse or its parts can be presented both at the place of discovery and in the morgue. Most often, close relatives, family members, friends, acquaintances who knew about the life of the deceased take part in such an investigative (search) action. Therefore, the investigator must pay special attention to the psychological preparation of the person who will be identified. Death greatly changes the appearance of a person. Therefore, it is important, before presenting for identification, to first find out whether the person who is identifying can really identify the corpse, to ask the person who is identifying the corpse about the appearance and signs of the deceased, which should be recorded in the protocol [1, p.118]

The investigator must pay special attention to the psychological preparation of the person identifying the body before conducting the identification. For this purpose, a psychologist may be invited. This is especially relevant when it comes to crimes against the life of a person that were the result of military aggression and caused the death of many people.

According to Art. 230 of the Criminal Procedure Code of Ukraine, the presentation of a corpse for identification is carried out in compliance with the requirements stipulated in Parts 1 and 8 of Art. 228 of the Criminal Procedure Code of Ukraine. As is known, one corpse is presented for identification, and the requirements of Part 2 of Art. 228 of the Criminal Procedure Code of Ukraine do not apply to this type of investigative (detective) action. It is quite clear that the principles of psychology are laid down in the basis of such a provision (in particular, the prevention of psychotraumatic effects on a person).

Preliminary interrogation of the person identifying the body on the specified grounds should maximally narrow the circle of corpses that can be presented for identification. A more balanced approach may be to present the corpse in a photo or video image. However, we note that in many cases, bodies can be severely distorted, fragmented due to explosive and gunshot wounds, exposure to high temperatures and adverse natural factors. Because of this, identification-significant features for visual recognition are lost. Therefore, the only way to identify a person under such conditions is to order a molecular genetic examination [2, p.663-664]

During the examination of the corpse, the investigator must directly perceive the situation at the scene of the incident, which is the place where the corpse was discovered, identify and analyze sources of evidentiary information. Examination of the corpse, like any investigative (search) action, must be carried out in compliance with certain principles stipulated by the Code of Criminal Procedure of Ukraine, namely: unified leadership, planning and purposefulness, clear organization, application of special knowledge (mandatory involvement of a forensic expert or doctor), technical - forensic and other means of collecting information, etc. [3, p.53]

It seems reasonable to think that if the deceased was identified by appearance, then it is necessary to carry out such an investigative (search) action as presenting the body for identification. The main subjects of identification can be close family members. As we have already indicated above, such a procedure is painful and sometimes unbearable, therefore the participation of a psychologist is extremely advisable and necessary, because the recognizer, being in a state of shock, may incorrectly assess the found soldier due to the refusal to accept the fact of the death of a loved one. On the eve of identification, the investigator or prosecutor must interview the person who recognizes, regarding appearance, special features of the possible serviceman. The consequence of such action is the drawing up of a protocol. Identification can be carried out using photographs, video materials or at points of collection and storage of bodies and remains.

To establish the possibility of presenting for identification in general and to determine the type of this investigative (detective) action during the interrogation of the future identifying person, among other things, his psychological characteristics must be established, in particular, a tendency to suggestion, the ability to remember certain life circumstances, etc.

The criminal procedural legislation of Ukraine regulates the procedure and specifics of examining a corpse when examining the scene of the incident, namely, Part 1 of Article 238 of the Code of Criminal Procedure of Ukraine states that ... the examination of the corpse is carried out by an investigator or prosecutor with the mandatory participation of a forensic medical expert or doctor ... In particular, the examination of the corpse can be carried out simultaneously with the examination of the scene of the incident, thus the legislator regulates two procedural actions, i.e. without distinguishing the corpse as a separate object of research (Part 2 of Article 238 of the Code of Criminal Procedure of Ukraine). After a thorough collection of materials and an external examination of the corpse, which is conducted by an investigator or prosecutor in the presence of witnesses, the corpse is sent to a state specialized institution to determine the cause of death and is an independent object of research during a forensic medical examination (Part 3, Article 238 of the Criminal Procedure Code).

Ukrainian experts emphasize that when identifying deceased persons in emergency situations with mass casualties in Ukraine, a comprehensive approach should be used, i.e., it is necessary to start with traditional methods of identification studies with the determination of general features,

and only then move on to individual ones. DNA analysis should not be the only method of positive identification. In cases of mass deaths due to disasters and military conflicts, the role of preliminary establishment of a biological profile increases, i.e., determination of general features: race, gender, age, height, size of headgear, blood type, other general identification features, which are not only a source of additional information, but also allow for forensic delimitation of objects subject to identification [4]

Preliminary interrogation of the person performing the identification on the specified features should significantly narrow the range of corpses that can be presented for identification. In addition, in our opinion, a more balanced approach may be to present a corpse for identification by photo or video. At the same time, we note that in many cases, bodies can be severely distorted, fragmented due to explosive and gunshot wounds, exposure to extremely high temperatures and adverse natural factors. Because of this, identification-significant features for visual identification are lost. Therefore, the only way to identify a person under such conditions is to order a molecular genetic examination [5, p.251]

In the practice of pre-trial investigation, there are two main cases of presenting a corpse for identification. The first case occurs when organizing a presentation immediately after inspecting the scene, and the investigator is often deprived of the opportunity to question anyone about the signs of an unknown person whose corpse will be presented. Under such circumstances, without prior interrogation, the corpse is presented to residents of nearby houses, streets, as well as to officials who communicate with the population. The second case occurs when, at the time of identification, there is information about the disappearance of a certain person, their relatives or acquaintances are questioned, and then the corpse is presented to them for identification [6, p. 250]

The basis for this type of presentation for identification is the discovery of a corpse that could not be immediately identified due to the lack of documents or persons who knew the deceased. From the specified investigative (search) action, it is necessary to distinguish the so-called «operative identification» of the corpse, when it is presented immediately after the inspection of the scene of the incident to residents of nearby buildings, as well as to officials who communicate with the population, without observing the procedural rules for presentation for identification. The legislation does not provide for the presentation of things or a corpse for identification by photographs or video materials, however, investigative practice requires this type of presentation for identification, especially in conditions of war realities. Thus, quite often there is a need to present a corpse for identification by photographs, when at the time of presentation of the corpse for identification the corpse was not preserved for identification and the identity of the victim was not established, but there are photographs of the corpse in the materials of the criminal proceedings. Focusing on the needs of investigative practice, the literature proposes to regulate the procedure for presenting a corpse for identification by supplementing the relevant articles of the Criminal Procedure Code of Ukraine with a norm regarding the possibility of presenting a corpse or things for identification by photographs or video materials [7, p.266]

Therefore, presenting a corpse for identification in accordance with Art. 230 of the Criminal Procedure Code of Ukraine is carried out in a situation where there is information about the disappearance of a certain person. In this case, to identify the deceased, his relatives or acquaintances are interrogated in order to establish the possibility of their recognition of the corpse. During the interrogation, it is necessary to find out: last name, first name, patronymic; age; profession; external signs (height, condition and color of hair on the head, color of eyes, skin, etc.); when the person was last seen; how he was dressed, what things were with him; special signs (tattoos, condition of teeth - presence of fillings, crowns, dentures, absence of individual teeth, etc., postoperative scars, etc.).

It is also established whether the interrogated person can recognize the corpse. Based on the information received, a decision is made on the advisability of presenting the discovered corpse for identification. In order to create appropriate conditions for identification and neutralize possible psychological obstacles, the corpse can be given a life-like appearance (the so-called «corpse toilet» is performed): removing dirt and blood from its face, opening its eyes, restoring its hairstyle to its normal appearance, etc. (performed by a forensic medical expert).

The corpse is presented for identification one (in the singular) in the morgue of the forensic medical examination body, undressed, covered with a cloth in compliance with ethical norms and in the

presence of a forensic medical expert and two witnesses. If a person recognizes the corpse, he must name the signs and indicate them on the corpse. If the corpse is not recognized, it is photographed according to the rules of signal photography, fingerprinting is carried out and put on the register of unidentified corpses.

It is the qualitative and proper approach of the pre-trial investigation bodies to the collection, verification and evaluation of the evidence base obtained in the process of the pre-trial investigation that maximally ensures the fulfillment of the tasks of criminal proceedings. Therefore, from this point of view, it can be argued that the quality of conducting investigative (search) actions in a specific criminal proceeding aimed at verifying evidence, including presentation for identification, is aimed at overall effectiveness and achieving the goal in criminal proceedings. It should be noted that during the presentation for identification, the person who identifies is forced to make mental conclusions about the similarity or difference of a person or thing that he observed earlier, in addition, these memories relate to moments that are quite traumatic for his psyche, this applies more to victims, but witnesses also do not escape the possibility of receiving extremely negative emotions while observing the fact of committing a criminal offense [8, p.81]

This investigative (detective) action requires significant time expenditure by the investigator, the person who will identify, and other persons. Its organization and conduct provide for the possibility and necessity of certain forms of cooperation between the investigator, the person who will identify, and the persons among whom the person will be presented for identification, as well as the voluntary expression of will of such persons to participate in the investigative action. The decision to present for identification occurs in conditions of tactical risk. Even in those conditions when the person who identifies describes the signs by which he can recognize a person, it is impossible to exclude situations when during the presentation he does not recognize the person who was presented for identification [9, p. 53]

Among the experience of other countries, the following features of presentation for identification should be highlighted: 1) if the corpse of a person is identified, whom the person who identifies saw alive, it is allowed to make up the deceased (Article 230 of the Criminal Procedure Code of the Republic of Kazakhstan, Article 117 of the Criminal Procedure Code of the Republic of Moldova); 2) when presenting an object for identification, it is allowed to clean it from dirt, rust or other layers, if this does not lead to its destruction as a means of evidence (Article 222 of the Criminal Procedure Code of the Republic of Armenia, Article 117 of the Criminal Procedure Code of the Republic of Moldova). It seems advisable, if possible, to borrow foreign experience in making up the deceased. Thus, identifying the deceased when he has a neat appearance, similar to the one the person had when he was alive, will significantly improve the course of the identification and the results, because in many cases, individuals are not psychologically ready to see a corpse with cadaveric stains, putrefactive processes, etc., which in turn complicates the conduct of such an investigative action [10, pp. 74-75]

5. Conclusions.

Presentation for identification is a rather complex investigative (search) action, the source of forensically significant information in which is a person - a person in whose memory an imaginary image of a certain object is stored, which is planned to be presented to him for identification. The completeness and reliability of the results of presentation for identification are ensured by a clear procedural order for conducting this investigative (search) action. It should also be taken into account that this investigative (search) action is almost always associated with tactical risk: the person who identifies may make a good faith mistake. Therefore, if the subject of the investigation has doubts about the successful outcome of the presentation for identification, it should be refrained from conducting it and use other opportunities to verify the factual data.

Identification of a corpse is carried out in order to establish the identity of the deceased. The investigator or prosecutor preliminarily questions the person who is identifying about the appearance of the deceased and the circumstances under which he saw this person. The presentation of the corpse for identification takes place in compliance with the requirements for the preliminary interrogation of the person who is identifying and with the involvement of the necessary specialists, for example, psychologists or forensic experts. In cases where the corpse has suffered significant

damage, difficulties may arise with identification, which requires the use of additional identification methods, such as DNA analysis.

The need to present the corpse for identification may arise in two typical situations: 1) directly at the place where the corpse was discovered; 2) in the premises where the corpse is stored (morgue, forensic medical examination office, etc.). But in both cases, the purpose of presenting the corpse for identification is the same: to establish the identity of the corpse. The presentation of the corpse for identification should be carried out in the clothes that are on it. The presentation of a corpse for identification must be preceded by the so-called "toilet" of the corpse, which consists in carrying out such manipulations with the appearance of the corpse that bring it as close as possible to its appearance during life: removing dirt, blood, fixing the eyes, masking injuries, etc.

Usually, the person conducting the identification is given the opportunity to examine the face of the corpse, and only if necessary (when the person notes the presence of special signs that would confirm its identification) - part of the body, or the whole body.

In conditions of martial law, when bodies can be severely damaged as a result of shelling, explosions or other military actions, identification can be complicated, therefore it is important to use modern methods, such as identification using DNA from bones and teeth, as well as the involvement of experts in the field of criminalistics and forensic medicine.

A protocol must be drawn up both in the case of a positive and negative result of the identification. The protocol is signed by: the person who conducted the procedural action, as well as the persons who were present or participated in the conduct of this investigative (search) action.

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