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# ҚЫЛМЫСТЫҚ ПРОЦЕСС ЖӘНЕ КРИМИНАЛИСТИКА

## УГОЛОВНОЕ ПРАВО И КРИМИНОЛОГИЯ

### CRIMINAL PROCEDURE AND CRIMINALISTICS

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R.M. Zhamiyeva, A.O. Shakenov, Z.B. Zhumanbayeva

*Ye.A. Buketov Karaganda State University  
(E-mail: zhumanbayevaz@mail.ru)*

#### **Tactical features of the inspection of the scene in cases of torture**

In order to implement the principles of the Istanbul Protocol on the effective investigation and documentation of torture of state bodies responsible for combating corruption, including during the first urgent process, the investigative action. Investigators can apply the whole complex of investigative actions (interrogation, appointment of examinations, inspection of the scene, seizure, etc.), including instructing operational units to carry out unsolicited investigative actions. One of the urgent investigative actions conducted during the investigation of criminal cases of torture is the examination of the scene of the incident to which this scientific article is devoted. Inspection of the scene is carried out with the purpose to find out the traces of the crime (blood, saliva, other discharge, microparticles, microsprints, instruments of crime, parts of clothes). In order to ensure comprehensive and qualified collection of forensically significant information, in the opinion of the authors, the tactics for the inspection of the scene should be carried out taking into account the specifics of criminal offenses of this category. Based on the identified features, the article gives recommendations aimed at optimizing the work of the investigator and specialist. In particular, the participation of a forensic specialist will allow to identify and carefully study the characteristics characterizing: the purpose and properties of the object, its name, material, shape, dimensions, presence of brands, stamps, numbers, inscriptions, jags, cracks. Inspection of the scene is conducted with the purpose of detecting traces of a crime (blood, saliva, other discharges, microparticles, microsprints, instruments of crime, parts of clothing, rust and other signs); the state of the object and its parts (especially when inspecting the weapon); presence on the subject of any traces and their characteristic features; the presence and nature of various overlays - dust, dirt, blood, etc. The questions raised in this scientific article concerning the detection and fixation of various objects, including additional traces of importance for the case, as well as clarification of the situation and circumstances of the commission of torture, will ultimately provide evidence of the committed offense.

*Keywords:* methods of investigation, tactics of investigating activities, tactics of crime scene investigation, investigators in charge, a forensic scientist.

It is clear that methods of investigating various crimes help investigators in charge, people responsible of carrying out a study before the case goes to court, investigate and collect evidence on crime scene and prevent crime [1; 511].

Criminal law identifies rules of all the procedures of investigating crime for all participants in the process while forensic science, based on these regulations, works out the most effective ways of detecting crime and it creates the complex of methodology of forensic science by using the latest achievements in forensic science, gained experience as well as by considering peculiarities of different crimes. Therefore, a collection of methods constitutes one chapter of forensic science and it includes a few scientific regulations. The methodology collection provides guidelines of investigating a crime scene. These guidelines which are designed for carrying out organized investigation, tend to contain useful information about effective technics and tactics of using tools and about the organization of investigation based on the knowledge of forensic science and other fields as well.

Each crime well as any criminal act violating constitutional and people's law under the investigation condition bring some changes to the environment. Traces are considered to be the evidence of criminal act, therefore, it is vital to analyze traces while investigating crime scene. Based on traces left by suspected criminal, it is quite possible to reconstruct crime or at least, to create a picture of a crime scene.

The variety of traces depicts different stories of these traces. The appearance of traces is affected by physical, chemical, biological and other unlimited phenomena. Consequently, all the trace evidence is impossible to be collected by one science, especially, forensic science.

The term «trace» in forensic science has narrow and broad meaning. By broad meaning it implies any objects that were in contact with criminal, any damage happened as result of a crime or any fragments resulted in two objects touch or when small particles disbursed by action or movement. Such things are divided into 3 groups a) visual trace; b) objects as traces; c) things as traces.

Visual trace involves visual examination of a crime scene to analyze any signs of showing the actions of trace leaver. The visual traces can be identified as following:

- human;
- tools, manufacture mechanisms
- vehicles and mechanisms;
- vehicles and others.

Regarding to traceability which is usually provided by trace tools used in the torture process and traumatic injuries. In addition to the trail, the traces are investigated by threads, leads, sticky tapes and many other things.

The micro-objects are more helpful in revealing and interpreting crimes. Microscopic materials are found in materials, things, tissue, and microscopes involve a large number of objects, which are associated with the place of committed crime. Traditional traces (printers, toolbars) are usually stayed in the places of incident. Criminals leave traces in order to destroy other micro-objects.

The micro-objects are difficult or impossible to find, to learn and to research without special tools, because they are material objects, connected with suppressions, size and weight. This kind of work is being carried out with special technical equipment for the maintenance of objects of small amounts.

Key features of micro-objects are:

- a connection with the place of crime;
- special pieces of equipment without which it is impossible to find or investigate the objects;
- a small amount of micro-objects.

Before searching for micro-objects it is important to identify where these objects could be found. This is defined by the mechanism of triggering events, way of crime commitment which consequently brought to crime.

There are typical carriers of micro-objects for any type of a crime. It is very important to define the carrier objects where the micro-objects could be found. As the basics the questions about the order of search, the required methods and instruments should be answered. Beforehand, we should revise the possible variants of traces and concentrate on the following aspects:

- 1) sequence of crime;
- 2) things are in the events field;
- 3) physical quantity and chemical quality of objects specified;
- 4) the storage location influence on the properties of the substance;
- 5) how torture was committed.

By analyzing the character of a crime and a mechanism perpetration, it is possible to detect tracers of micro-objects.

As a rule, the carriers of micro-objects are: human body, clothes of a complainant and a suspect; tools, used by a criminal while committing a crime; different things in the place of crime.

There are the traces of crime instruments of a victim and a suspect, micro-traces and micro-particles of these things and other material traces (dust, paint, glue, sticky tape) left in such places.

Besides, smells can be retained on objects for a long period of time. People give little weight to smell traces, because of that smells are retained in the places of crime; thus, it is possible for smell of people participated in the crime to retain inside the things and rooms. Consequently, it is possible to study the smell traces and identify people connected with the crime. Later with the help of proceedings rules this information will be important to prove the participation of a suspect in the crime.

Meanwhile, resources of torture include:

- materials used in criminal proceedings, which have been handed over to the victim;
- documents related to investigation, prepared or kept in other institutions (such as the medical cards, etc.);
- other written materials related to investigation (an invitation letter, etc.);
- subjects and documents that could be play an important role in disclosing criminal cases (gloves, clothes, etc.);
- audio and video recordings.

Taking into account the possible changes of things which undergo the changes in the environment, such as changes or loss of subject features, forms transformation of some objects, the definite investigation actions should be taking in order to collect and study these things.

Criminal investigation tactics take an important role in criminalistics, it is distinguished by own definite investigation actions. The explanation of investigation actions are identified not only by a system of procedural legal acts, but also by features of criminalistics methods. According to researchers-investigators the main signs of investigation actions are finding, collecting, checking the evidence, and actions used for validation or ratification. Thus, a scientific system of rules used during the process of investigation while effective and rational collecting and checking of evidence information is identified by an investigation tactics.

It is important to consider the place of crime in terms of separate criminal cases, including tortures during investigation actions, as information received in the result of such investigation actions will allow investigating the assumptions, checking its usefulness and identifying a number of people who could be criminals [2; 217].

Search and examination is conducted in order to find different objects, conditions of living, documents, traces and material objects which could be meaningful for this case, in addition with the purpose of identifying the circumstances of torture and other circumstances related to the case.

Objects that are searched and examined:

- office rooms (rooms for conducting an investigation, places of temporary detention and other);
- regions and places of torture;
- transport means used by a complainant;
- tools of crime founded during the search (or witnessing)
- documents confirming criminal actions.

Investigation of place of crime, other regions related to case, places where the tools of crime are kept is conducted by a person who does prejudicial inquiry.

From tactic side the search and examination of place of crime is divided to preparation, work and conclusions.

The investigation action of search is prepared beforehand and thoroughly planned. Referring to opinion of some authors, the following actions should be taken on the initial stage:

- taking into account the formed conditions of the investigation identify the circle of search and examination participants;
- identify the order of people's actions during the process of place investigation;
- invite required qualified specialists;
- study the crime related materials, find traces of a crime;
- before the search and examination procedures the investigation action objectives, requirements, rights and obligatories have to be explained to a specialist;
- choose witnesses and explain them instructions [3; 445].

As practice show the effectiveness of search and examination depends on quality of preparation and thoroughness of the study. The possibility of not full collection of meaningful material traces which could be used as an evidence or help in search of a criminal, taken from the place of its storage, or a possibility of them being spoiled is connected with the literacy of the investigator. That is why it is important for the investigator to learn the tactic methods of work in the place of crime.

It is highly required for the investigator to do the actions necessary to be done before visiting the place of crime at any time of day or night in order to visit the place of crime as soon as possible. Because of that it is essential for an investigation team to be organized and to have prepared investigation suitcase equipped by technical criminalistics tools.

The following actions should be taken by the investigator when the information about the fact of torture is received:

- 1) it is highly important to find out who informed about the fact of torture, where and what subjects were used and where these subjects are kept;
- 2) to provide safe-keeping of the place of crime, people applied torture or people who could provide information about the torture;
- 3) to check the readiness of the technological tools necessary for check and examination procedures;
- 4) to provide necessary specialists, criminalists to participate in investigation actions;
- 5) to find witnesses to conduct check and examination, if it is necessary to involve them to participation;

In the period of room checking and examination a representative of an institution who found the fact of torture has to participate. In order to open the locks and attachment section the specialists are called. In this way not much time is required for an organized checking and examination.

After arriving to the place, the investigator conducts a thorough questioning with the people of that place. The questioning includes questions about their actions, or the changes which were introduced to the place of crime and about the arrangement of different subjects; which traces were deleted or which of them where can be found. While checking and examination of the place of crime paying bigger attention on composing the report about the investigation actions instead of clarifying the information about material traces or people committed the crime is considered to be one of serious mistakes.

In order to avoid these disadvantages it is important to imagine and keep in mind the continuum of precise responsibilities to be solved during the investigation actions [4; 36-48]. It is obligatory for the investigator to manipulate the method of modeling prepared by criminalists [5; 25-47], complex program and goal oriented approaches [6; 66].

There are general and detailed stages of checking and examination the place of crime provided in the textbooks on criminalistics:

- a) general checking and examination includes:
  - general circumstances of the place of crime are noticed;
  - the program of place of crime research procedures (clarify a method of checking and examination conduction, its order, its borders or circle and other) is identified;
  - the pictures of the place of crime using methods of observation and informedness are taken;
- b) during the detailed checking and examination:
  - firstly objects on its places (immovable), then every movable object are considered;
  - the search of traces of crime is conducted;
  - the traces of crime are taken away;
  - the negative circumstances are stated;
  - the pictures are taken in details.

There are four ways of place of crime checking and examination known in investigation experience:

1. Concentric way, checking and examination is conducted from the border parts to the center of the place of crime (directing to the corpse, safe or a relative point).
2. Eccentric way (ordinary speaking, a way of untwisting or unbraiding), checking and examination is conducted from the relative center to the border parts.
3. Mass or frontal way, checking and examination is conducted by one line (linear way) from one border part to another.
4. Mechanism way, checking and examination is conducted in the places important for the investigation, the yard is checked and examined in separated regions.

It is important to differ a way from a method. They are: subjective method – the investigator follows the same road which the criminal used, the chosen checking and investigation; objective method – despite the road passed by the criminal, the region of the place of crime is checked and examined (mass checking and examination).

Beginning to check and examine the place of crime in criminal case of case of torture, the investigator is supposed to try to get the maximum information about the crime and people who committed it by renewing and keeping in mind the whole picture, by investigating all known and existing subjects and material traces of the crime. A mechanism of presenting the traces of a crime should be constructed in a logical way. In order to identify the left traces of criminal's personal features, the crime subjects' skills and abilities, profession and used tools the modeling method is used.

The information got from investigator's own observations, the actions of the victim, the witness or the suspect, the changes introduced and other objectives is compared here. By clarifying these questions it is possible to create a model of behavior, to identify the place of hidden crime instrument, and places of such material traces like blood, saliva, hair, tissues and other. If the place of left traces and microorganisms is known there is a possibility to organize fast search of them.

On the last stage of checking and examination the protocol, plan, scheme and drawing are composed, if it is necessary the finger prints are taken, taken objects are packed, in case if it is impossible to keep the condition of traces or to take the traces in the same way as they were before, the work is directed to copy these objects, the checking and examination participants' requests are considered, the evaluation of done work is given by taking into account the completeness and effectiveness of work [7; 132].

Finding additional traces, including the information accounted to be a source of checked information on torture cases, identifying and searching traces (voice or video) which are possible to take identification procedures, and involving specialists-criminalists are considered to be the main goal for the investigator.

Electronic instruments, voice or video recorders, pictures or photos taken by different equipment, information from the computer can be included to the sources of information about crime. The increasing importance of these sources can be observed from year to year. This type of sources is located to a special group because of its usefulness and features of distribution. For example, video cameras set on different organizations, on the building where criminal process investigators work (set up in a compulsory way in most cases) can be included to the electronic observation instruments. The video materials recorded with the help of these cameras can be a source of information to prevent the crime or solve the cases of law violations. Because of this there is no hesitation that these materials are considered to be a source of information about the crime. There could be own technical peculiarities of checking, examination and investigating the information provided by video cameras. It is important to mention about the level of difficulty in taking the information from or distributing and recording, involving the specialists, a necessity in providing a processual guaranty of validity of appropriate information type and other situations.

Electronic instruments as a sample of information source allows getting the required for the investigation information on the first beginning stage of investigation. The conclusions done by specialist criminalists allow having a prognosis, following check of which provides fast solutions of cases, and expertise results, in turns, provide the case with evidence. According to torture cases a professional consideration of electronic equipment provide finding the traces in the places of crime and investigation prognosis about crime commitment allows catching a suspect in a relatively soon time during the checking process, crime instruments are confiscated and in the near future the conduction of expertise provide a separate evidence. The work of a specialist during the checking and examination of electronic instruments which are used a source of information influence a process of initial investigation actions (checking and examination of place of crime) and results of criminal case investigation. It also provides achieving the aim of court proceedings. In our opinion, it is necessary to widen the possibilities of specialists criminalists directed on accomplishment of different professional tasks connected with technical and criminalistics provision of criminal investigations. It is important to enhance theoretic, legislative, organizational structure, system of packing technical and criminalistics support and preparation of required specialists.

Thus, the analysis of the crime and criminal's traces identified during checking and examination of the place of crime, and the analysis of other sources, provides the investigator with additional counted prognosis of efficient investigation and a possibility to conduct an aimed investigation. The search of traces which could become objects of identification process to be considered as a source of information, the search done beforehand and cooperation with specialists-criminalists is the main purpose of the investigator.

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Р.М. Жәмиева, А.О. Шәкенов, З.Б. Жұманбаева

### **Азаптау істері бойынша оқиға орнын қарап-тексеру тактикасының ерекшеліктері**

Азаптауды тиімді тергеу және құжаттандыруға қатысты Стамбул хаттамасында бекітілген қағидаларды жүзеге асыру мақсатында мемлекеттер азаптау және қатал қарау жайлы шағымдар мен хабарламалардың жедел және тиімді тергелуін қамтамасыз етеді. Олар сотқа дейінгі тергеп-тексерудің бірыңғай реестрінде азаптау жайлы қылмыстық құқықбұзушылық жайлы ақпарат тіркелген сәттен, немесе бірінші кейінге қалдырылмайтын тергеу әрекетін жүргізу сәтінен, бастап тергеледі. Тергеушілер тергеу әрекеттерінің барлық кешенін (жауап алу, сараптама тағайындау, оқиға болған жерді қарау, алу және т.б.), оның ішінде жедел-тергеу бөлімшелеріне жасырын тергеу әрекеттерін жүргізуді тапсырады. Осы ғылыми мақала азаптауға қатысты қылмыстық істер бойынша жүргізілетін кейінге қалдырылмайтын тергеу әрекеттерінің бірі оқиға болған жерді қарауға арналған. Оқиға болған жерді қарау қылмыс іздерін (қан, сілекей, өзге бөлінулер, микробөліктер, микроіздер, қылмыс қарулары, киім бөліктерін) табу мақсатында жүргізіледі. Криминалистикалық маңызы бар ақпараттарды жан-жақты және білікті жинауды қамтамасыз ету мақсатында, авторлардың пікірінше, оқиға болған жерді қарау тактикасы аталмыш санаттағы қылмыстық құқықбұзушылықтардың ерекшеліктерін ескере отырып, жүзеге асырылуы тиіс. Анықталған ерекшеліктерге негізделі отырып, мақалада тергеуші мен маманның жұмысының тиімділігін арттыруға бағытталған ұсыныстар берілген. Ішінара маман-криминалистің қатысуы: заттың сипаты мен ерекшеліктерін, оның атауын, материалын, пішінін, өлшемін, таңбасының, маркасының, номерінің, жазуларының, керткітерінің, жарықшаларының болуын, тот басуының және басқа сипаттарының болуын; заттың және оның бөліктерінің жағдайын (әсіресе қаруды қарағанда); затта іздердің болуын және тек өзіне тән сипаттардың болуын; түрлі сипаттағы қабаттасудың болуы және олардың ерекшеліктерінің болуын – шаңның, тозаңның, қанның және т.б. Осы мақалада баяндалған әртүрлі объектілерді табу және алуға қатысты сұрақтар, оның ішінде іс үшін маңызы бар қосымша іздерді табу және алуға қатысты сұрақтар, сондай-ақ азаптаудың жағдайы мен мән-жайларына қатысты сұрақтарды анықтау нәтижесінде жасалған қылмыс жайлы дәлелдемелерді қалыптастыруға септігін тиіс етеді.

*Кілт сөздер:* тергеу әдістемесі, тергеу әрекеттерінің тактикасы, оқиға орнын қарап-тексеру тактикасы, қылмыстық процесті жүргізуші орган қызметкерлері, криминалист-маман.

Р.М. Жәмиева, А.О. Шәкенов, З.Б. Жұманбаева

### **Тактические особенности осмотра места происшествия по делам о пытках**

В целях реализации принципов Стамбульского протокола по эффективному расследованию и документированию пыток государства должны обеспечивать оперативное и эффективное расследование жалоб и сообщений о пытках или жестоком обращении, которые, в свою очередь, начинают расследоваться с момента регистрации заявления, сообщения об уголовном правонарушении в Едином реестре досудебных расследований либо при проведении первого неотложного следственного действия. Следователи могут применять весь комплекс следственных действий (допрос, назначение экспертиз, осмотр места происшествия, выемка и др.), в том числе поручать оперативным подразделениям проведение негласных следственных действий. Одним из неотложных следственных действий, проводимых при расследовании уголовных дел о пытках, является осмотр места происшествия, которому посвящена данная научная статья. Осмотр места происшествия проводится с целью обнаружить следы преступления (кровь, слюна, иные выделения, микрочастицы, микроследы, орудия преступления, части одежды). В целях обеспечения всестороннего и квалифицированного сбора криминалистически значимой информации, по мнению авторов, тактика осмотра места происшествия должна осуществляться с учетом специфики уголовных правонарушений данной категории. Исходя из выявленных особенностей в статье даются рекомендации, направленные на оптимизацию работы следователя и специалиста. В частности, участие специалиста-криминалиста позволит выявить и тщательно изучить признаки, характеризующие: назначение и свойства предмета, его наименование, материал, форму, размеры, наличие клейм, марок, номеров, надписей, зазубрин, трещин, ржавчин и других признаков; состояние предмета и его частей (особенно при осмотре оружия); наличие на предмете

каких-либо следов и их характерные признаки; наличие и характер различных наложений — пыли, грязи, крови и т.д. Освещенные в данной статье вопросы, касающиеся обнаружения и фиксации различных объектов, в том числе дополнительных следов, имеющих значение для дела, а также выяснения обстановки и обстоятельств совершения пыток, в конечном счете, позволят получить доказательства совершенного правонарушения.

*Ключевые слова:* методика расследования, тактика следственных действий, тактика осмотра места происшествия, органы, ведущие уголовный процесс, специалист-криминалист.

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