

## **Features of an investigative experiment in combat zone**

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*Features of a forensic specialist's participation in an investigative experiment are considered. The types of assistance that a forensic specialist can provide to an investigator in conducting an investigative action, rights and duties of a forensic expert are defined.*

*Keywords: investigative experiment; combat actions; criminal proceedings; specific expertise; cognitive action; evidential value.*

## **Особливості слідчого експеримента у зоні бойових дій**

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*Розглянуто особливості участі спеціаліста-криміналіста у слідчому експерименті, умови його проведення. Визначено види допомоги, які може надати спеціаліст-криміналіст слідчому у проведенні слідчо-розшукової дії, права та обов'язки судового експерта.*

*Ключові слова: слідчий експеримент; бойові дії; кримінальне провадження; спеціальні знання; пізнавальна дія; доказове значення.*

Conducting a pre-trial investigation is impossible without the use of specific expertise which is used by modern achievements of science, technology, art, and the invitation to the participation of knowledgeable persons.

Specific expertise is not generally known and publicly available, however, it must go beyond the professional knowledge of an investigator, prosecutor, and judge, but a forensic expert should not perform the functions of other procedural participants and resolve legal issues.

With the violation of the integrity of the territory and the inviolability of the borders of Ukraine,

the territories where combat actions are being conducted by the aggressor country, the de-occupied territories, appeared. In the territories mentioned above, where combat actions are taking place, legal regulation and compliance with the laws of Ukraine are carried out. In problematic living conditions and during shelling, in order to ensure the rule of law, investigators, prosecutors, and judges carry out their legal and protective activities, risking their own lives. For the full and comprehensive performance of duties, the latter use not only their knowledge and experience but also, as in peacetime, the specific expertise possessed by the forensic specialist in

each specific case is necessary. The consulting function of the forensic specialist plays a major role in criminal proceedings and gives preference to quality evidence collection.

Based on the circumstances, the investigator determines the necessity of carrying out one or another investigative action. During combat actions, he needs to calculate and understand the need to conduct an investigative experiment, clearly understand the goals, objectives and predict the result. If there is a lack of evidence, this evidentiary element should be used. At the same time, involve specialists whose specific expertise will provide convincing results of the guilt of the accused.

The investigative experiment is an investigative action that is carried out with the aim of checking existing and obtaining new evidence by purposefully influencing individual (such as being checked) objects or their copies during specific experiments. Thus, the investigative experiment is a cognitive action, the essence of which is to conduct research related to the verification or establishment of any fact, phenomenon, or thing [1].

An essential condition for conducting an investigative experiment is its implementation in conditions as close as possible to those in which the investigated action or event took place in the past. Before conducting research activities, it is necessary to reproduce (reconstruct) the environment in which they will be conducted. Failure to comply with this condition is considered a violation of the requirements of the criminal procedural law, which causes the loss of evidentiary value of the obtained data.

The assistance of specialists to the investigation's subject can be determined by such:

- participation in monitoring the correct implementation of the conditions for conducting an investigative experiment, i.e. ensuring the adequacy of the criteria for comparing circumstances that require clarification or verification;
- participation in choosing among the characteristics and parameters that are checked, those that reflect the essential aspects of the investigated circumstance or fact (based on the tasks of the investigative (research) action, data from special literature and own experience);
- taking into account the maximum possible range of changes in certain characteristics and circumstances;

- scientific & technical and advisory support for experimental verification of circumstances;
- participation in establishing the nature, regularity, and stability of the connection between previously established reliable and experimentally obtained parameters of the analyzed situation.

Specialists assist the investigator at all stages of the investigative experiment: to identify key points and determine dangerous moments for the participants' health; reproduce the environment and conditions of conducting experiments, as close as possible to the event of a criminal offense; develop a plan, organize experiments and monitor their implementation; to assist in the selection of analogs, the production of models and dummies, the selection of vehicles (if necessary); evaluate the results obtained during the investigative experiment.

The legislator provides a specialist, during an investigative experiment on behalf of the subject of the investigation, the right to measure, photograph, sound or video, draw up plans and diagrams, make graphic images of places or individual things, make prints and casts.

In addition to the specialist's oral statements and additions, which are included in the protocol of the investigative experiment, the investigator can select the specialist's written explanation, which, in accordance with Art. 105 § 2 of the Criminal Procedure Code of Ukraine is added to the protocol as an appendix and subsequently included in the system of procedural sources of evidence as a document. The specialist's written explanation may explain the methods used for certain calculations, the principle of operation of technical means used, the peculiarities of the existence and human perception of certain phenomena and related events, etc. Including in the written explanation, the specialist can state certain conclusions about the course of the investigative experiment and its results, which will assist in correctly evaluating them among other sources of evidence. One should not neglect the opportunity provided by the legislator to receive an explanation from a specialist who participated in the investigative experiment. Subsequently, the subject of the investigation and court do not have the opportunity to receive any factual data from the person who was involved as a specialist in the conduct of investigative (search) action, in particular the investigative

experiment, and in this way, evidential information is lost. Therefore, it is strongly recommended to attach to the protocol of the investigative experiment a written explanation of the specialist who participated in its implementation. The legislator has not established requirements for the execution of such a procedural document, therefore the subject of the investigation is not limited in terms of the structure, content and form of this document. In the event that a specialist's written explanation is attached to the protocol of the investigative experiment, a corresponding entry indicating the general scope of such an explanation is made in the protocol.

According to Art. 69 § 3, Part 2 of the Criminal Procedure Code of Ukraine, an expert has the right to be present during procedural actions related to the subject and objects of research, that is, the expert has the right to be present during an investigative experiment if the course and results of the investigative experiment are related to the subject and objects of research. The subject of the investigation is obliged to take into account such rights of the expert and inform the expert (or experts) about the organization and conduct of the investigative experiment, which concerns the subject and objects of the research, in cases of conducting relevant examinations in the criminal proceedings under investigation. At the same time, it does not matter at the initiative of which side of the criminal proceedings such examinations are conducted, and whether they are conducted by state specialized institutions or by experts who are not employees of state specialized institutions.

Regardless of the exploratory nature of the investigative experiment, it should not be used as a substitute for conducting a forensic examination to establish the factual data necessary for the investigation, and vice versa. For instance, the investigator needs to determine the importance of conducting an investigative experiment or a graphological examination. This choice is due to the fact that many scientists consider graphology a pseudoscience and the evidence of graphologists is often ignored in criminal cases due to the fact that the methods of graphology lack predictive ability.

Based on the above, the role of specific expertise possessed by a specialist cannot be overestimated. The effectiveness of conducting the investigative experiment largely depends on the participation of a forensic specialist who provides assistance to

the investigator. The change in life circumstances, regardless of the conduct of military operations by the aggressor country, the importance of the participation of a forensic specialist remains relevant and procedurally required in achieving the goal of the investigative (search) action. During combat actions, the issue of compliance with the law arises, therefore, it is necessary to carry out an investigative action as required by the legislator and involve a forensic specialist not only when necessary, but for a more complete collection of evidence and completeness of the truth's establishment.

### References

1. Криміналістика України: питання і відповіді : навч. посіб. 2017 / Меґо-Інфо — Юридичний портал № 1. URL: <http://meگو.info/%D0%BC%D0%B0%D1%82%D0%B5%D1%80%D1%96%D0%B0%D0%BB/63-%D0%BF%D0%BE%D0%BD%D1%8F%D1%82%D1%82%D1%8F-%D0%B7%D0%B0%D0%B2%D0%B4%D0%B0%D0%BD%D0%BD%D1%8F-%D1%82%D0%B0-%D0%B2%D0%B8%D0%B4%D0%B8-%D1%81%D0%BB%D1%96%D0%B4%D1%87%D0%BE%D0%B3%D0%BE-%D0%B5%D0%BA%D1%81%D0%BF%D0%B5%D1%80%D0%B8%D0%BC%D0%B5%D0%BD%D1%82%D1%83> (date accessed: 06.03.2023).
2. Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 р. № 4651-VI (зі змін. та доп). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 06.03.2023).
3. Криміналістика и судебная экспертиза : междуведом. науч.-метод. сб. 2014. Вып. 59. С. 148—153.
4. Пиріг І. В. Теоретико-прикладні проблеми експертного забезпечення досудового розслідування : монографія. Дніпропетровськ, 2015. С. 310—333.
5. Шепитько В. Ю. Проблемы использования специальных знаний в уголовном судопроизводстве. Сучасні проблеми розвитку судової експертизи : зб. мат-лів засід. «кругл. столу», присвяч. 10-річ. створ. Севастопол. від. ХНДІСЕ ім. Засл. проф. М. С. Бокаріуса (Севастополь, 10—11.06.2010). Харків, 2010. С. 7—9.