

interaction which include: 1) engagement of a specialist to conduct investigative (detective) actions, covert investigative (detective) actions, and measures to ensure criminal proceedings, 2) appointment of forensic examinations (forensic economic forensic, handwriting, commodity, computer and technical, telecommunication, phonoscopic, technical examination of documents, etc.), 3) interaction with the state financial control authorities (financial audit, audits (inspections), procurement monitoring and procurement verification), 4) consultations (written and oral), etc.

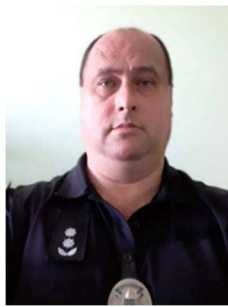
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#### **PECULIARITIES OF INTERACTION OF INVESTIGATORS OF THE NATIONAL POLICE OF UKRAINE WITH THE ARMED FORCES OF UKRAINE DURING THE TRANSFERRING ITEMS AND DOCUMENTS DISCOVERED ON THE BATTLEFIELD OR IN DEOCCUPIED TERRITORIES**

**Олексій Бойко, Володимир Єфімов. ОСОБЛИВОСТІ ВЗАЄМОДІЇ СЛІДЧИХ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ ЗІ ЗБРОЙНИМИ СИЛАМИ УКРАЇНИ ПРИ ПЕРЕДАЧІ РЕЧЕЙ ТА ДОКУМЕНТІВ, ВИЯВЛЕНИХ НА ПОЛІ БОЮ ЧИ ДЕОКУПОВАНИХ ТЕРИТОРІЯХ.** Висвітлено особливості взаємодії слідчих Національної поліції України зі Збройними Силами України при передачі речей та документів, виявлених на полі бою чи деокупованих територіях.

Акцентовано на тому, що доцільно здійснювати збирання військовослужбовцями усіх речей і документів, що ними виявляються в ході бойових дій, та їх передачу різноманітними способами через довірених осіб слідчому, в якого під територіальною юрисдикцією знаходиться місцевість. Вказаним способом інколи фактично знищується доказова сила виявлених матеріальних слідів злочину, оскільки, по-перше, предмети з різних ділянок фронту потрапляють до одного пакету, і встановити час та точне місце їх виявлення не видається за можливе, а по-друге, особи, які здійснюють доставку пакетів до слідчого, також не володіють інформацією щодо обставин та точного місця вилучення та не можуть дати жодних коментарів із приводу наданих потенційних речових доказів.

Доведено, що передача представниками Збройних Сил України слідчому Національної поліції України інформації при виявленні та фіксації вчинення воєнного злочину може здійснюватися: на окупованій території, на території, де ведуться активні бойові дії, та на деокупованій території.

На окупованій території та території, де ведуться активні бойові дії, така інформація може бути зафіксована на відео за допомогою БпЛА.

Офісом Генерального прокурора України та Національною поліцією України для практичних працівників розроблено пам'ятки та рекомендації щодо організаційних засад забезпечення діяльності слідчо-оперативних груп Національної поліції України з документування

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воєнних злочинів, процесуальних та тактичних особливостей проведення невідкладних слідчих (розшукових) дій в умовах воєнного стану, підготовки та призначення судових експертиз під час досудового розслідування воєнних злочинів.

**Ключові слова:** взаємодія, слідчі Національної поліції України, Збройні Сили України, передача речей та документів, поле бою, окуповані території, деокуповані території.

**Relevance of the study.** Verkhovna Rada of Ukraine adopted a number of laws, according to which police authorities have additional powers to ensure the effectiveness of criminal proceedings and the exercise of police powers under martial law.

The process of pre-trial investigation under martial law has some negative issues that significantly complicate the conduct of procedural actions and decision-making. In particular, there are factors that influence the conducting investigative (search) actions, the choice of forms and methods of investigative units activity. They are the legal regime (restriction of rights, freedoms and interests of citizens), a decrease in the population (absence of witnesses), hostilities (threat to the life of an investigator while performing his official duties), the level of public danger of crimes committed in conditions of hostilities and the severity of their consequences, a decrease in the capabilities of operational units, etc.

**Recent publications review.** Domestic scientists were engaged in the study of topics related to the investigation of war crimes, among which it is worth noting M. Chlenov, T. Fomina, A. Kohuta, A. Kovalenko, O. Pchelina, A. Piddubna, O. Starostin, A. Timofeiev and others. Their works created a significant theoretical basis for further research and practical activities in this area.

The study of the interaction of investigators of the National Police of Ukraine with the Armed Forces of Ukraine when transferring items and documents found on the battlefield or in deoccupied territories is an important task for scientists and practitioners of Ukraine, because this will contribute to increasing the level of investigation of war crimes.

Since, as of today, there is no official document that would regulate the procedure for interaction between investigators of the National Police of Ukraine and representatives of the Armed Forces of Ukraine when investigating war crimes, including the procedure for transferring items and documents found on the battlefield or in deoccupied territories, we will try to analyze the views of scientists on this issue. We hope that the results of the study will be useful for scientists, practical workers of the National Police of Ukraine and military personnel working in this area.

**The article's objective** is to highlight the features of interaction between investigators of the National Police of Ukraine and the Armed Forces of Ukraine when transferring items and documents found on the battlefield or in deoccupied territories and to provide recommended algorithms of action.

**Discussion.** The interaction of investigators of the National Police of Ukraine with representatives of the Armed Forces of Ukraine (hereinafter – AFU) when transferring items and documents found on the battlefield or in deoccupied territories currently causes certain difficulties, which is primarily due to the different functions of activity or tasks of the investigative units of the National Police of Ukraine and units of the AFU.

Proper interaction of pre-trial investigation bodies during the investigation of crimes with other bodies and units under martial law is a necessary prerequisite for effective and successful pre-trial investigation of criminal offenses.

In conditions of prolonged full-scale military aggression, mechanisms for ensuring law and order is extremely important, which the legislator forms and improves based on the challenges of today. In particular, the legislator has made amendments to Section IX-1 «Special regime of pre-trial investigation, trial under martial law» of the Criminal Procedure Code of Ukraine, which should ensure pre-trial investigation and interaction of investigators with other bodies and units under martial law [3].

Thus, in accordance with Section 3 of the Order of the Ministry of Internal Affairs of Ukraine «On the Organization of the Activities of the Investigative Units of the National Police of Ukraine» dated from July 6, 2017 No. 570, one of the functions of the investigative units is a comprehensive, complete and impartial investigation of the circumstances of the criminal proceedings, the identification of circumstances that expose and justify the suspect, the accused, as well as circumstances that mitigate or aggravate his punishment, providing them with a proper legal assessment and ensuring the adoption of lawful and impartial procedural decisions. That is, the investigators of the National Police of Ukraine are entrusted with the function of investigation [1].

In turn, according to Art.1 of the Law of Ukraine «On the Armed Forces of Ukraine», the functions of the military of the AFU are defense of Ukraine, protection of sovereignty, territorial integrity and inviolability [2].

All this leads to differences in understanding by AFU of certain norms of the Ukrainian criminal procedural legislation regarding the collecting evidence during the investigation of war crimes, which may subsequently lead to the recognition of the collected evidence as inadmissible.

According to experts, it is advisable for servicemen to collect all items and documents that they find in the fighting and transfer them in various ways through trusted persons to the investigator who has territorial jurisdiction over the area. This method sometimes actually destroys the evidentiary value of the identified material traces of the crime, since, firstly, items from different areas of the front are collected in one package and it is not possible to establish the time and exact place of their discovery, and secondly, the persons delivering the packages to the investigator also do not have information about the circumstances and exact place of their seizure and cannot give any comments on the potential material evidence provided [4].

The Prosecutor General's Office and the National Police of Ukraine have developed Memos and Recommendations for practitioners on the organizational principles of ensuring the activities of investigative and operational groups of the National Police of Ukraine for documenting war crimes, procedural and tactical features of conducting urgent investigative (search) actions under martial law, preparation and appointment of forensic examinations during pre-trial investigations of war crimes. They are Algorithm of actions for the National Police of Ukraine investigative and operational groups in the liberated territories for documenting war crimes (using the example of the liberated territories of the Kyiv region); Algorithm of National Police of Ukraine employees response to events related to shelling of settlements, which resulted in large-scale destruction of civilian infrastructure, primarily critical, and/or significant human losses; Memorandum on the organizing and conducting investigative (search) actions during the investigation of attacks (shelling) on the civilian population and civilian infrastructure; Memorandum «Special regime of criminal proceedings in martial law»; Memorandum on the specifics of conducting interrogations of victims/witnesses regarding the investigation of facts of sexual violence in armed conflict; Recommendations for conducting a scene inspection, etc.

The above-mentioned developments indicate the types of investigative and operational groups of the National Police of Ukraine for documenting war crimes and a non-exhaustive list of bodies and units with which pre-trial investigation bodies interact during urgent investigative (search) actions under martial law, as well as a clear algorithm of actions for each member of the investigative and operational group of the National Police of Ukraine. In particular, in connection with the documentation of war crimes, pre-trial investigation bodies interact with units of the State Emergency Service, the Armed Forces of Ukraine, sappers and paramilitary territorial defense formations of the Armed Forces of Ukraine, local self-government bodies, experts and specialists in the use of missile forces, artillery and military aviation (invited from relevant military units or military command bodies if necessary to determine the probable directions of attacks that led to the death or injury of persons and/or damage (destruction) of objects, and to establish the types of weapons used to carry out the attacks), investigators of the State Security Service of Ukraine, representatives of the media and volunteers [5–11].

Summarized scientific publications, materials from interviews with investigators of the National Police of Ukraine and military personnel of the Armed Forces of Ukraine, we come to the conclusion that the transfer of information by representatives of the AFU to the investigative National Police of Ukraine when detecting and recording the commission of a war crime can be carried out in the occupied territory, in the territory where active hostilities are underway, and in the deoccupied territory.

In the occupied territory and in the territory where active hostilities are underway, such information can be recorded on video using a UAV.

When it is impossible to involve an investigator in a specific area of deployment of the AFU, the algorithm of actions for transferring the video for including it in the materials of the criminal proceedings should be as follows: 1) notification of the representative of the AFU by a report from his immediate commander about the detected war crime UAV recorded on video; 2) sending, with a cover letter signed by the commander, a report by the representative of the AFU about the detected war crime on UAV recorded video to the pre-trial investigation body of the National Police of Ukraine, under whose territorial jurisdiction the place of commission of the war crime is located; 3) entering information into the URPTI; 4) sending a request in accordance

with Art. 93 of the Code of Criminal Procedure of Ukraine by the investigator to the Armed Forces of Ukraine to obtain the UAV recorded video; 5) Conducting a review of the video by the investigator.

If possible, such a video may be obtained without sending a request in accordance with Art.93 of the Code of Criminal Procedure of Ukraine [3] and in the following order: 1) the investigator summons the representative of the Armed Forces of Ukraine (the UAV operator) who discovered the war crime for questioning as a witness; 2) the investigator issues a resolution to take testimony from technical devices and technical means that have the functions of photography, filming, video recording, or means of photography, filming, video recording in accordance with Art.245-1 of the Code of Criminal Procedure of Ukraine [3]; 3) the investigator draws up a report on the recording of such a video in accordance with the requirements of the Code of Criminal Procedure of Ukraine in the presence of the representative of the Armed Forces of Ukraine (the UAV operator) who discovered the war crime.

Regarding the trophy documents from the territory of the fight and from the deoccupied territories, representatives of the Armed Forces of Ukraine, during hostilities or patrols, may discover various objects and documents related to the commission of war crimes. In such a case, the representatives of the Armed Forces of Ukraine should ensure the preservation of evidence firstly. Such preservation must be carried out from the moment of discovery, collection, packaging until the transfer to the investigator of the discovered objects and documents that have evidentiary value.

If it's impossible for an investigator to get to the specific area of deployment of the AFU, the procedure for transferring items and documents (trophies) that may contain information about war crimes discovered in the territory of active fights to include them in the materials of the criminal proceedings, they should be carried out according to the following algorithm: 1) after the discovery by the Armed Forces of Ukraine of items and documents that may have evidentiary value, the items and documents are collected (if possible for video recording) and packaged. It is recommended to pack the discovered items and documents in waterproof bags (packages) that are marked with labels; 2) a representative of the Armed Forces of Ukraine should draw up a report, which is submitted to the commander together with the package on the circumstances of the capture, time and date of the capture, place of capture, full rectangular coordinates X, Y of the capture point, enemy unit to which the captured documents belonged; 3) sending with a cover letter a report signed by the commander of the representative of the Armed Forces of Ukraine on the discovered items and documents that may contain data on the commission of a war crime to the pre-trial investigation body of the National Police of Ukraine, under whose territorial jurisdiction the place of commission of the war crime is located; 4) entering information into the URPTI; 5) sending a request in accordance with Art. 93 of the Code of Criminal Procedure of Ukraine by the investigator to the Armed Forces of Ukraine to obtain the discovered items and documents; 6) conducting an inspection of the discovered items and documents by the investigators of the National Police of Ukraine; 7) questioning the representative of the Armed Forces of Ukraine who discovered the captured items and documents and the commander; 8) ordering expert examinations if necessary.

The procedure of transferring items and documents (trophies) that may contain data of war crimes discovered in the deoccupied territories with the possibility of involving an investigator, for the purpose of including them in the materials of the criminal proceedings, should be carried out according to the following algorithm: 1) identification by representatives of the Armed Forces of Ukraine of items and documents that may have evidentiary value for the commission of war crimes; 2) ensuring the inviolability of the place of discovery until the arrival of investigators; 3) drawing up a report by a representative of the Armed Forces of Ukraine, which is submitted to the commander on the discovery of items and documents; 4) notification by the commander of the pre-trial investigation body of the National Police of Ukraine, under whose territorial jurisdiction the place of the commission of the war crime is located, on the discovery of items and documents; 5) conducting an inspection of the scene by the investigator with the seizure of the discovered items and documents; 6) interrogation of the representative of the Armed Forces of Ukraine and the commander who discovered the trophy items and documents; 7) if necessary, ordering expert examinations.

**Conclusions.** Thus, the transferring of information by representatives of the Armed Forces of Ukraine to the investigative of the National Police of Ukraine upon detection and recording of the commission of a war crime can be carried out in the occupied territory, in the territory of fighting, and in the de-occupied territory.

In the occupied territory and in the territory of fighting, such information can be recorded on video using an UAV.

The Prosecutor General's Office and the National Police of Ukraine have developed for practical workers Memos and Recommendations on the organizational principles of ensuring the activities of investigative and operational groups of the National Police of Ukraine in documenting war crimes, procedural and tactical features of conducting urgent investigative (search) actions under martial law, preparation and appointment of forensic examinations during the pre-trial investigation of war crimes.

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#### ABSTRACT

The article highlights features of interaction between investigators of the National Police of Ukraine with the Armed Forces of Ukraine during the transferring things and documents discovered on the battlefield or in deoccupied territories.

It is indicated that it is advisable for servicemen to collect all items and documents that they discover in the fighting, and transfer them in various ways through trusted persons to the investigator under whose territorial jurisdiction the area is located. This method sometimes actually destroys the evidentiary value of the discovered material traces of the crime, because of some reasons.

**Keywords:** *interaction, investigators of the National Police of Ukraine, Armed Forces of Ukraine, transferring of items and documents, battlefield, occupied territories, deoccupied territories.*