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## CECHY ŚLEDZTWA W SPRAWIE TORTUR I UMYŚLNYCH MORDERSTW POPEŁNIONYCH Z POWODÓW SEKSUALNYCH, Z ROZCZŁONKOWANIEM I POHAŃBIENIEM CIAŁA

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**Adnotacja.** Dochodzenie i rozwiązywanie umyślnych morderstw stwarza poważne trudności dla organów śledczych. W szczególności analiza danych statystycznych wskazuje, że 9–10% umyślnych zabójstw w Ukrainie corocznie pozostaje nierozwiązanych w latach 2014–2022 (z wyjątkiem zabójstw podczas walk w latach 2014–2023). Wynika to przede wszystkim ze szczególnego charakteru tej kategorii przestępstw: celowości, a nie spontaniczności ich popełnienia, staranności przygotowania, udziału dużej liczby osób w realizacji planu i tym podobnych.

Na przykład w celu popełnienia morderstwa coraz częściej opracowywany jest plan jego przygotowania, popełnienia i ukrycia, angażowane są osoby z doświadczeniem kryminalnym lub osoby, które przeszły specjalne szkolenie, co jeszcze bardziej utrudnia jego ujawnienie i zbadanie. Do tego należy dodać niewystarczającą liczbę, a w przypadku niektórych rodzajów przestępstw – brak wyników badań naukowych i praktycznych zaleceń, uwzględniających specyfikę ujawniania i dochodzenia w poszczególnych kategoriach zabójstw umyślnych.

**Słowa kluczowe:** śledztwo w sprawie zabójstw umyślnych, rozcłonkowanie zwłok, wykorzystywanie seksualne ciała zmarłej osoby.

## PECULIARITIES OF INVESTIGATION OF TORTURE AND PREMEDITATED MURDERS COMMITTED ON SEXUAL MOTIVES WITH DISMEMBERMENT AND DESECRATION OF THE CORPSE

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**Abstract.** Investigating and solving premeditated murders poses serious difficulties for the investigating authorities. In particular, the analysis of statistical data shows that 9–10% of premeditated murders in Ukraine remain unsolved every year from 2014 to 2022 (except for murders during hostilities from 2014 to 2023). This is mainly due to the special nature of this category of crimes: the deliberateness rather than spontaneity of their commission, thoroughness of preparation, participation of a number of people in the implementation of the plan, etc.

For example, in order to execute a murder, a plan is increasingly drawn up for its preparation, commission and concealment, and people with criminal experience or persons who have undergone special training are involved, which makes its detection and investigation even more difficult. To this should be added the insufficient number, and for some types of crime, the absence of scientific research results and practical recommendations that take into account the specifics of solving and investigating certain categories of intentional homicide.

**Key words:** investigation of premeditated murders, dismemberment of a corpse, sexual abuse of a dead person's body.

## ОСОБЛИВОСТІ РОЗСЛІДУВАННЯ КАТУВАНЬ ТА УМИСНИХ ВБИВСТВ, ВЧИНЕНИХ З СЕКСУАЛЬНИХ МОТИВІВ, З РОЗЧЛЕНУВАННЯМ ТА НАРУГОЮ НАД ТІЛОМ

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**Анотація.** Розслідування та розкриття умисних вбивств створює серйозні труднощі для слідчих органів. Зокрема, аналіз статистичних даних свідчить, що 9–10% умисних вбивств в Україні щороку залишаються нерозкритими з 2014 по 2022 рік (за винятком вбивств під час бойових дій з 2014 по 2023 рік). Це пов'язано насамперед з особливим характером цієї категорії злочинів: навмисністю, а не спонтанністю їх вчинення, ретельністю підготовки, участю великої кількості осіб в реалізації плану тощо.

Наприклад, для виконання вбивства все частіше розробляється план його підготовки, вчинення та приховування, залучаються люди з кримінальним досвідом або особи, які пройшли спеціальну підготовку, що ще більше ускладнює його розкриття та розслідування. До цього слід додати недостатню кількість, а за деякими видами злочинів – відсутність результатів наукових досліджень і практичних рекомендацій, що враховують специфіку розкриття та розслідування окремих категорій умисних вбивств.

**Ключові слова:** розслідування умисних вбивств, розчленування трупа, сексуальне насильство над тілом померлої особи.

**Introduction.** Traditionally, starting with the well-known developments of Hans Grosz, forensic science has paid some attention to the investigation of homicides. Thus, in the works of criminologists and forensic physicians (V.O. Konovalova, M.V. Popov, K.I. Tetiev, V.F. Chervakov, and others), the basic provisions of the methodology of homicide investigation were formulated, which formed the basis of textbooks and manuals on criminalistics at that time. In terms of their content, these studies are practical recommendations for conducting certain (urgent) investigative actions. However, the fundamental social, economic and political changes taking place in modern Ukraine have a certain impact on the mechanisms of committing this type of crime. The legal regulation of law enforcement agencies, in particular, their criminal procedural, operational and investigative activities and the use of their results in evidence, has also changed.

Certain problems of solving and investigating premeditated murders in modern conditions have attracted the attention of well-known domestic scholars. On the topics of investigation of certain types of murders, PhD theses were written by O.Y. Bululukov (Kharkiv, 1997), A.V. Starushkevych (Kyiv, 1998), I.V. Borysenko (Kharkiv, 1999), V.I. Boyarov (Kyiv, 2000), S.F. Zdorovko (Kharkiv, 2002), M.V. Kostenko (Kharkiv, 2003), and V.V.), M.V. Kostenko (Kharkiv, 2003), V.V. Semenogov (Kharkiv, 2004), V.L. Synchuk (Kharkiv, 2004), O.O. Andrieiev (Kharkiv, 2007), I.V. Kubaruk (Kharkiv, 2007), I.V. Kubarev (Kharkiv, 2007), Y.B. Komarynska (Kyiv, 2010), A.M. Chorny (Kyiv, 2010), I.S. Syvodied (Kyiv, 2021). The author of this article's doctoral dissertation on the investigation of certain types of premeditated murder (Zaporizhzhia, 2011) and others are also worth mentioning. However, it should be noted that many issues of both theoretical and practical nature have remained unaddressed by researchers.

**Main text.** It is noted that in Ukraine, the USA and European countries, modern methods of identification of a person are used with the help of DNA genetic examinations. There are cases where the offender was identified after several decades. For example, in England, in 2022, the detained David Fuller, who is 67 years old, confessed

to committing 51 rapes of the dead bodies of women when he worked as a house manager at the Royal Tunbridge Wells Hospital in Kent, south of London.

In total, the man had raped approximately 100 dead women aged 8 to 66 over a period of 12 years. Investigators said that Mr. Fuller's guilt was only recently discovered and that it was thanks to new advances in DNA testing and a huge operation by Kent Police. DNA from his saliva and private parts was found on the bed and towel of one of the murdered women. When they searched his home after his arrest, they found a large number of computer disks and other storage devices with many videos of him raping the dead bodies of two corpses at the hospital where he worked (In England, an electrician is accused of double murder and sexual abuse of corpses in morgues. Ukrainian national NEWS agency).

In 2023, there was an increase in the number of murders of minors and young girls in Ukraine (Kyiv, Odesa, Kirovohrad, Kharkiv, Lviv and Ternopil regions), and the perpetrators of the murders were also identified through DNA testing.

In the period of 2015–2022, the author thoroughly studied various types and methods of intentional murders, some of which are not committed as often, for example, murders with dismemberment of the corpse, sexual murders, but combined methods of intentional murder, when there was rape, then murder, dismemberment of the corpse, hiding its parts, and after some time the remains of the corpse were removed and sexually abused, were extremely rare in the practice of investigation.

We will focus on the theoretical and practical aspects of the investigation of intentional murders with dismemberment of the corpse and intentional murders on sexual motives, for which it is necessary to refer to the general theory of investigation of these types of intentional murders.

**Murders with dismemberment of the corpse.** After committing a murder, the idea of dismembering a corpse may come to the perpetrator quite spontaneously, for example, in the case of negligent homicide, but it may also be an act of a pre-planned event, where the fact of dismembering the corpse and its parts will be only the last stage of the premeditated murder. Therefore, dismemberment of a corpse should be considered as a set and an element of the method of preparation, commission and concealment of a crime. It plays an important role, without its study it is almost impossible to establish the method of murder (Лук`янчиков, Лук`янчиков, Петряев: 2017, 287).

All of the above elements of the forensic characterization constitute a single structural whole, but each of them has specifics inherent in the named category of offenses. The criminal dismemberment of a corpse was first mentioned by V.F. Chervakov. In his opinion, criminal dismemberment is the separation of any part(s) of the corpse of a murdered person in order to prevent identification, as well as to facilitate transportation and concealment of the corpse parts (Шепітько, 2016: 72). We distinguish the following types of murders with dismemberment of the corpse: 1) domestic murders; 2) sexual murders, both related to rape and sexual sadism; 3) murders for the purpose of transplanting human organs and tissues; 4) ritual murders (Саїнчин, 2004:189).

#### **Investigation of sexually motivated murders.**

Due to the specifics of the object of knowledge, it is advisable that the study of this category of homicide be carried out comprehensively, from the standpoint of forensic science, forensic psychiatry, sex pathology and other related sciences.

Analysis of such criminal acts shows that they are committed for different reasons and with different goals. Usually, they are committed to conceal a rape or other sexual crime or attempted rape, i.e., for reasons related to fear of possible liability. In order to take revenge on the victim for its resistance, or accidentally, when the perpetrator does not compare the degree of physical violence in the process of overcoming the victim's resistance. Recently, the same group increasingly includes murders committed with the aim of achieving sexual satisfaction during, after or instead of sexual intercourse (as its equivalent), since copulation itself does not produce the desired result. They also include the facts of depriving a person of life in order to perform sexual intercourse with a corpse, manipulation of the corpse, its parts, objects or clothing of the victim.

The science of forensics has developed separate intraspecific forensic methods for investigating each criminal offense against human life and health, which are successfully used in practical activities to combat criminal unlawfulness, including its organized manifestations.

Given that in practice, investigators mostly need to investigate crimes against human life and health, such as murder and bodily harm that pose a great public danger, we consider it necessary to consider the specifics of investigating these types of offenses.

**The forensic characterization and peculiarities of the tactics of certain investigative actions are as follows.** The main elements of the forensic characterization of murders are: a) the method of committing murders (preparation, direct commission of murder, concealment); b) time and place of the murders; c) a typical «trace pattern»; d) the identity of the perpetrator; e) the identity of the victim.

#### **The initial stage of the murder investigation.**

At the initial stage of a homicide investigation, the following list of tasks is solved: 1) determination of the place of the murder; 2) determination of changes at the scene; 3) determination of the cause of death and time of death; 4) determination of the mechanism of the perpetrator's actions; 5) identification of persons who were at or near the scene of the murder; 6) determination of the form of guilt, motives and purpose of the murder; 7) identification of the killer; 8) identification of the deceased.

The tactical features of certain investigative (search) actions during the investigation of murders may be as follows: a) inspection of the scene and the corpse; b) identification and interrogation of witnesses; c) identification

and interrogation of the victim's relatives and friends; d) interrogation of suspects; e) appointment of a forensic medical examination [4, p. 165].

subject of our study was the premeditated murders committed in the city of Chornomorsk (Illichivsk), Odesa region, in the period from 2016 to 2023. According to the criminal proceedings and the verdict in the case, it was established that on June 30, 2016, at approximately 15:08, G. together with Z., while intoxicated in Chornomorsk, Odesa region, called their friend K., with whom they had been dating and having sexual relations for some time, and offered her to visit a public beach on the Black Sea coast together with the consumption of alcoholic beverages, to which the latter agreed.

Then, after K.'s consent, they were on the Black Sea coast, on the beach, resting and drinking alcoholic beverages. After G. and Z. took turns raping K. on the sand, G. suggested that Z. kill the victim and hide her body in the bushes near the beach slopes. Having agreed on the murder, G. put K. on her back, held her hands, and Z. strangled her with his hands. The victim's body was hidden in the bushes of the beach area. The same night, G. suggested that Z. check whether K. was really dead, and when they arrived at the place of burial and made sure that K. was dead, they again took turns committing a desecration of the victim's corpse, which was expressed in sexual intercourse with the victim, after which the corpse was buried deep in the sand.

A few days later, in the evening, G. and Z. again arrived at the burial site of the victim, dug up the corpse, over which G. committed sexual abuse, after which Z., not wanting to have sexual relations with the corpse, which had begun to show signs of decomposition, undressed the corpse, dragged it to the sea, where he dismembered the body with a knife, washed its parts, pulled them to the shore and committed sexual abuse over the body parts. The body parts were buried deep in the sand on the beach in Chornomorsk.

The search for the missing K. and the analysis of CCTV footage led to the identification and detention of G. and Z. The corpse and the scene were examined and sent for forensic examination, where it was established that K.'s death was caused by compression of the neck organs, which led to the development of asphyxiation in conjunction with a fracture at the junction of the right large horn with the body of the hyoid bone. There is a direct causal link between the injuries and the victim's death. The prosecutor's office entered the data into the URPTI on the motives of criminal offenses under paragraph 12 of Part 2 of Article 115, Part 3 of Article 297 of the Criminal Code of Ukraine and initiated a pre-trial investigation, which, upon completion in 2017, was submitted for consideration to the local court of Chornomorsk (Про захист прав людини та основоположних свобод, 2004; Про прокуратуру, 2014; Про судову експертизу, 1994; Інструкція про організацію взаємодії органів досудового розслідування з іншими органами та підрозділами Національної поліції України у запобіганні кримінальним правопорушенням, їх розкриттю та розслідуванню, 2017; Порядок взаємодії органів і підрозділів Національної поліції, закладів охорони здоров'я та органів прокуратури України при встановленні факту смерті особи, 2017; Фурман, Котляренко, 2017).

Having examined all the circumstances of the criminal proceedings and the identity of the accused G., the court found that he had been convicted several times before, was not registered with a narcologist or psychiatrist, and was characterized as a person against whom no complaints had been received at his place of residence. Having examined the data on the personality of the accused Z., the court found that he had no previous convictions, was not registered with a narcologist or psychiatrist, and was characterized as a person against whom no complaints had been received at his place of residence. The court recognizes the commission of a criminal offense by persons in a state of intoxication as an aggravating circumstance for the accused G. and Z. The court did not find any circumstances mitigating the punishment of the accused.

According to paragraph 3 of Part 1 of Article 49 of the Criminal Code of Ukraine, a person is released from criminal liability if the following periods have elapsed from the date of commission of the criminal offense and before the date of entry into force of the verdict: five years – in case of a minor crime (at the time of commission of the crime – of medium gravity), except as provided for in paragraph 2 of this part (Кримінальний кодекс України: Закон України від 05.04.2001 р. № 2341-III. Верховна Рада України). Given that more than five years have passed since the commission of the criminal offense under Part 1 of Article 396 of the Criminal Code of Ukraine – June 30, 2016 – Z. is subject to release from criminal liability for its commission. The Court also considers that when deciding on the issue of offsetting the pre-trial detention of the accused G. and Z., the legal opinion set out in the decision of the Grand Chamber of the Supreme Court of August 29, 2018 (case No. 663/537/17, proceedings No. 13-31ks18) should be followed, according to which: if a person committed a criminal offense before June 20, 2017 (inclusive), then when counting pre-trial detention in the sentence, part 5 of Art. 72 of the Criminal Code of Ukraine as amended by the Law of Ukraine No. 838-VIII of November 26, 2015 «On Amendments to the Criminal Code of Ukraine on Improving the Procedure for the Court to Credit the Term of Pre-trial Detention to the Sentence», due to both direct and retroactive effect of the criminal law in time, i.e. at the rate of one day of pre-trial detention for two days of imprisonment, if a person committed a crime starting from June 21, 2017 (inclusive), then part 5 of Art. 72 of the Criminal Code of Ukraine as amended by the Law of Ukraine No. 2046-VIII of May 18, 2017 «On Amendments to the Criminal Code of Ukraine on the Rules for Computing Sentences and Crediting the Term of Pre-trial Detention», at the rate of one day of pre-trial detention for one day of imprisonment. If a person committed a crime before June 20, 2017 (inclusive) and continued to be subject to pre-trial detention after June 21, 2017, i.e. after the entry into force of Law No. 2046-VIII, then Part 5 of Article 72 of the Criminal Code of Ukraine as amended by Law No. 838-VIII shall be applied when counting pre-trial detention as part of the sentence. In this case, Law No. 838-VIII has a transitional (ultra-active) effect. The application of Law No. 2046-VIII to such cases

is incorrect, since the retroactive effect of Law No. 2046-VIII as «otherwise worsening the situation of a person», in accordance with Part 2 of Article 5 of the Criminal Code of Ukraine, is not allowed by Article 72 of the Criminal Code of Ukraine as amended by Law No. 2046-VIII (direct effect of Law No. 2046-VIII).

In such circumstances, when deciding on the issue of offsetting the pre-trial detention of the accused G. and Z., one should be guided by Part 5 of Article 72 of the Criminal Code of Ukraine as amended by Law No. 838-VIII, i.e. at the rate of one day of pre-trial detention for two days of imprisonment, since they committed criminal offenses before June 20, 2017, namely in the period from June 30, 2016 to July 04, 2016. Thus, the period of his pre-trial detention, namely his detention during the pre-trial investigation and trial, should be counted towards the sentence of the accused G. at the rate of one day of pre-trial detention for two days of imprisonment for the period from July 07, 2016 until the entry into force of this verdict, but not more than the expiration of the sentence imposed by this court verdict.

On June 19, 2023, the Illichivsk City Court of Odesa Region issued a court verdict sentencing G. to a lesser sentence by subsuming a more severe sentence with a more severe one in the form of 14 years in prison. The court found Z. guilty of committing a criminal offense under Part 1 of Article 396 of the Criminal Code of Ukraine, sentenced him to 3 years in prison, and, in accordance with Part 5 of Article 74 of the Criminal Code of Ukraine, released him from the sentence imposed due to the expiration of the statute of limitations provided for in paragraph 3 of Part 1 of Article 49 of the Criminal Code of Ukraine (Фурман, Котляренко: 2017).

Due to the fact that the convicts had actually served their sentences, both convicts were released from custody on the same day, 28.06.23. On the same day, both convicts arrived in the city of Chornomorsk.

Almost a week after their release, on 08.07.2023, in the morning, in the city of Chornomorsk, a package was found near a garbage container containing the dismembered corpse of a young girl with signs of rape. The surveillance cameras were checked again, and the suspects G. and Z. were identified and detained. The Prosecutor's Office registered them in the Unified Register of Pre-trial Investigations on the grounds of a criminal offense under Part 1 of Article 115 of the Criminal Code of Ukraine. At this time, it is known that at night on 08.07.2023, a more precise time has not been established during the pre-trial investigation, Z., together with D., who turned out to be a prostitute, and G. were at Z.'s place of residence in an apartment, where they were drinking alcohol together.

While drinking alcohol, a quarrel arose between Z. and D. on the basis of suddenly arising hostile relations. During the quarrel, Z., being intoxicated, realizing the social danger, realizing the possibility of socially dangerous consequences and wishing them to occur, intending to take D.'s life, realizing his criminal intent, took a rope that was near the bed in the bedroom, and wound the rope around his arms, threw it around D.'s neck and began to squeeze it by using physical force, and G. committed an attack with strangulation and strangulation with the intent to kill. As a result of Z.'s intentional actions, due to the rope squeezing the neck and blocking the air access to the victim's vital organs, D. died of mechanical asphyxiation by strangulation. After making sure that D. did not show signs of life, Z. released the rope, got the desired result, i.e. the death of D. Subsequently, in order to hide the traces of the criminal offense, Z. dismembered and wrapped D.'s corpse in a blanket, then placed it in a wooden bedside table in the apartment and on 12.07.2023 in the morning took it out of the apartment, leaving the bedside table near the garbage cans.

### Conclusions.

First of all, it should be noted that criminal law in terms of sanctions and sentencing is archaic and has not fulfilled its purpose.

Secondly, it is necessary to change the general concept of the tasks of criminal law and recommend imposing the most severe punishment for committing such offenses, for which purpose a new version of the Criminal Code of Ukraine should be developed and adopted.

Thirdly, the specifics of the implementation of the criminal procedural legislation in terms of investigating these particularly serious offenses are quite sufficient to collect evidence and identify suspects in criminal proceedings.

Fourth. The developed forensic methodology for investigating premeditated murders fully fulfills the current tasks of identifying, detaining suspects and establishing evidence of their involvement in these offenses.

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