

THE ROLE OF FORENSIC MOLECULAR GENETIC EXAMINATION UNDER THE LEGAL REGIME OF MARTIAL LAW IN UKRAINE

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Problem statement. Since the beginning of the full-scale armed aggression of the Russian Federation against Ukraine, one of the priority areas of law enforcement activity, conducted by specially authorized state bodies and their officials, has been the investigation of war crimes, a search for missing people and identification of deceased servicemen, police officers, members of voluntary formations of territorial communities, as well as civilians. In order to establish legally significant factual circumstances of the commission of criminal offences and form a holistic evidence base in criminal proceedings in relation to the belonging of biological traces to a certain person, data on whose genetic characteristics is subject to voluntary or mandatory state registration in the Electronic Register of Human Genomic Information, it is necessary to carry out such procedural action as forensic molecular genetic examination [3]. In particular, at the Second All-Ukrainian Forum of Forensic Experts, held on June 17, 2022 in Lviv and initiated by the Ministry of Justice of Ukraine, professionals of executive and legislative branches, judiciary and law enforcement system, forensic experts, scientists and lawyers noted that under martial law there was a rapid growth in the number of forensic (including molecular genetic ones) examinations upon the facts of establishing missing people and unidentified corpses, the facts of determining the means of defeating an enemy as well as the consequences of using all weapon components [4, p. 16].

Since the data, obtained from results of the molecular genetic study, makes it possible to identify a living person or a corpse with the maximum possible accuracy, based on the biological material left at a certain object in connection with the commission of a criminal offence, it is especially relevant to research an issue regarding the importance of molecular genetic examination, which is carried out with the application of the latest methods of forensic DNA analysis, under modern conditions of conducting active hostilities on the territory of Ukraine.

Objectives. The purpose of this work is to analyse and substantiate the significance of forensic molecular genetic examination for effective task performance in criminal proceedings during the investigation of a certain category of crimes under the legal regime of martial law in Ukraine.

Methods. The methodological basis is made up of general scientific and special legal methods of cognition. Thus, the methods of analysis, synthesis, formal-legal and dialectical methods have been used.

Results. Forensic molecular genetic examination, which is conducted by the subjects of forensic expert activity, defined in the Law of Ukraine “On Forensic Examination”, on the basis of an appropriate court ruling or a decision of pre-trial investigation body, contributes to the establishment of objective truth in criminal proceedings via accomplishing a number of identification tasks [2]. For example, based on results of the molecular genetic research, an expert gives a reasonable written conclusion on the belonging of biological material to a certain person or exclusion of such belonging, that in turn has important evidentiary value in the course of criminal proceedings regarding the search for servicemen or civilians missing in connection with hostilities or temporary occupation of a part of the Ukrainian territory.

It is also advisable to note that the abovementioned type of forensic biological examination has gained special importance in the process of documenting war crimes and crimes against the foundations of national security of Ukraine (such as violations of laws and customs of war that caused the death of a person (under Part 2 Article 438 of the Criminal Code of Ukraine); deliberate actions committed to change territorial boundaries or state borders of Ukraine in violation of the order established by the Constitution of Ukraine that caused the death of people (under Part 3 Article 110 of the Criminal Code of Ukraine)), their further pre-trial investigation by authorized subjects of criminal proceedings [1].

For instance, the use of polymerase chain reaction (PCR) method while carrying out molecular genetic study of even a small amount of biological material found at the crime scene, which in modern conditions of martial law is often the territories where hostilities are (were) conducted, allows:

- to establish the belonging of biological traces left at the scene to a person suspected of committing a criminal offence;
- to determine the belonging of traces of biological origin found at several scenes to one person and confirm the existence of a connection between different crimes [7, p. 173];
- to check genetic traits (DNA profile) of biological material (seized from the scene) against the information bases of DNA profiles formed by law enforcement agencies [6, p. 163].

Besides, forensic molecular genetic examination, thanks to the method of DNA analysis used for its conducting in forensic and other specialized institutions, is considered to be the most reliable (and in case of loss of important features for visual identification – the only one) way to establish the identity of servicemen and civilians who died in connection with the armed aggression of the Russian Federation against Ukraine. In particular, results of the early indicated type of forensic examination make it possible to identify even those bodies of the deceased that were severely distorted and/or fragmented as a consequence of explosive, gunshot lesions, exposure to extremely high temperatures or adverse natural phenomena, since the smallest particles of deoxyribonucleic acid (DNA), which is the object of molecular genetic research, have high resistance to the influence of various external factors [5, p. 50].

Conclusion. Under the conditions of a special legal regime on the Ukrainian territory, forensic molecular genetic examination plays a key role in documenting and investigating war crimes and crimes against the foundations of national security of Ukraine, searching for servicemen, police officers, members of voluntary formations of territorial communities, civilians who disappeared under special circumstances, identification of the deceased in connection with the armed aggression of the Russian Federation against Ukraine, by establishing biological relationship with their blood relatives (parents, children).

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