

финансовой деятельности государства и органов местного самоуправления, содержание финансовой деятельности в сфере здравоохранения. Выявлена роль государства и органов местного самоуправления как субъектов финансовой деятельности. Охарактеризованы принципы, методы, формы финансовой деятельности. Акцентировано внимание на том, что новая модель финансирования здравоохранения в Украине базируется на следующих принципах: финансовая защита; универсальность покрытия и справедливость доступа к медицинской помощи; прозрачность и подотчетность; эффективность; свободный выбор; конкуренция поставщиков; предсказуемость объема средств на медицинские услуги в государственном бюджете; субсидиарность.

რეზიუმე

ჯანმრთელობის უფლება: უკრაინის საერთაშორისო ვალდებულებები და საჯარო ხელისუფლების ინსტიტუტების ფინანსური საქმიანობა ჯანდაცვის ეროვნული სისტემის რეფორმის კონტექსტში

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სტატიაში შესწავლილია ადამიანის ჯანმრთელობის უფლება, როგორც ფუძემდებური უფლება დემოკრატიულ საზოგადოებისათვის, ასევე, საერთაშორისო ნორმები და სტანდარტები, უკრაინის საერთაშორისო ვალდებულებები, საჯარო ხელისუფლების ფინანსური ინსტიტუტების საქმიანობა უკრაინის ჯანდაცვის სისტემის ძირეული რეფორმის კონტექსტში.

ნატარებელი კვლევის მეთოდოლოგიურ საფუძველს წარმოადგენს სამეცნიერო შემეცნების ზოგადი და სპეციალური მეთოდები (ფორმალურ-ლოგიკური, შე-

დარებით-სამართლებრივი, სტრუქტურულ-ლოგიკური).

ნატარებელი კვლევის შედეგად გამოვლენილია სახელმწიფოს მიერ ნატარებელი ღონისძიებები საკუთარი ვალდებულებების შესრულებისათვის ჯანდაცვის სფეროში გაფორმებული საერთაშორისო ხელშეკრულებების ფარგლებში: ცვლილებების შეტანა მოქმედ კანონმდებლობაში და პრაქტიკაში მისი გამოყენება; ცვლილებების შეტანა ადმინისტრაციულ პრაქტიკაში; კანონპროექტების იურიდიული ექსპერტიზის უზრუნველყოფა; პროფესიული მომზადების უზრუნველყოფა საერთაშორისო ხელშეკრულებების და საერთაშორისო სასამართლო დაწესებულებების პრაქტიკის შესასწავლად იმ კატეგორიის მუშაკებისათვის, რომელთა საქმიანობა დაკავშირებულია სამართალწარმოებასთან, ასევე, ადამიანების ყოფნასთან თავისუფლების აღკვეთის პირობებში; ღონისძიებების გატარება სისტემური ხასიათის ხარვეზების აღსაკვეთად, საერთაშორისო ხელშეკრულებების ამ ხარვეზებით გამოწვეული დარღვევების შეწყვეტა.

ყურადღება გამახვილებულია ცნებების “საჯარო ფინანსები” და “საჯარო ფინანსური საქმიანობა” თანაფარდობაზე. გამოვლენილია სახელმწიფოს და ადგილობრივი მმართველობის ორგანოების ფინანსური საქმიანობის სამართლებრივი ორგანიზების თავისებურებები, ფინანსური საქმიანობის შინაარსი ჯანმრთელობის დაცვის სფეროში, ასევე, სახელმწიფოს და ადგილობრივი მმართველობის ორგანოების, როგორც სუბიექტების როლი ფინანსურ საქმიანობაში. დახასიათებულია ფინანსური საქმიანობის პრინციპები, მეთოდები და ფორმები. ყურადღება აქცენტირებულია იმაზე, რომ უკრაინაში ჯანდაცვის დაფინანსების ახალი მოდელი ეფუძნება ისეთ პრინციპებს, როგორცაა: ფინანსური დაცვა, დაფარვის უნივერსალობა და სამედიცინო დახმარებაზე წვდომის სამართლიანობა, გამჭვირვალობა და ანგარიშვალდებულება, ეფექტურობა, არჩევანის თავისუფლება, მომწოდებლების კონკურენცია, სახელმწიფო ბიუჯეტში სამედიცინო მომსახურებისათვის ხარჯების განჭვრეტადობა, სუბსიდიურობა.

USE OF SPECIAL MEDICAL KNOWLEDGE BY A PRACTITIONER DURING INTERACTION WITH INVESTIGATOR IN THE INVESTIGATION OF ILLEGAL MEDICAL ACTIVITY

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Rather negative tendency concerning the inadequate quality of medical care in the healthcare sector of Ukraine has been forming, that is why more and more cases on illegal medical activity and negative consequences for the health of patients are reported in mass media and corresponding law enforcement agencies. One of the important places in the methodology of investigation of illegal medical activity is the issue of effective use of specialized knowledge, which is caused, first of all, by the peculiarities of the public relations sphere, which are affected by such criminal acts.

The results of case law generalization clearly show that the important place in the system of use among the branches used in the investigation of illegal medical activities belongs to the group of specialized medical knowledge in the form of involve-

ment of the specialist in the procedural actions.

The purpose of the article is to determine the procedural status of the specialist in the criminal procedural law of certain countries; coverage of procedural and forensic aspects of using special medical knowledge by the specialist basing on the comparison with Ukrainian legislation; establishing the role of the medical specialist in the form of interaction with the investigator through involvement in the process of investigation of illegal medical activity.

Material and methods. The materials of the study are the results of the analysis of 17 court decisions on committing illegal medical activity, delivered by the courts of Ukraine during 2013-2020; the results of the survey of 33 employees of the

pre-trial investigation bodies of the National Police, operational units, prosecutor's offices and individual health care providers involved in the investigation of illegal medical activity in Ukraine; statistical reports of the National Police of Georgia on registered criminal proceedings on crimes against public health and public morals for the 2017 - march 2020; statistical reports of the Prosecutor General's Office of Ukraine for the 2014-2019 on registered criminal proceedings on illegal medical activities, as well as the consequences of their pre-trial investigation.

Methods used during the study: dialectical, system-structural, formal-logical, sociological and statistical.

Results and discussion. Article 3 of the Constitution of Ukraine determines that a person, his life and health, honor and dignity, integrity and security are recognized the highest social value in Ukraine. According to the Art. 49 of the Constitution of Ukraine, each person has the right for health care, medical care and health insurance. This constitutional right of the individual and the citizen is the responsibility of the state, represented by medical institutions and public health authorities, to ensure the provision of medical services of good quality. But today it is possible to speak about the improper fulfillment of the duty stipulated by the Constitution of Ukraine, as every year there is an increase in the number of reported cases of poor medical care rendered by medical employees, as well as illegal medical activities. This is also confirmed in Georgia, where the survey conducted by the Ministry of Health in 2019 identified series of offences on illegal medical activity in more than 2,800 health-care centers, most of which were private [1].

Therefore, Art. 138 of the Criminal Code (hereinafter - CC) of Ukraine is the criminal legal protection of citizens from illegal medical activity, according to the norms of which the responsibility arises for engaging in medical activities without special permission, carried out by a person without proper medical education, if it caused serious consequences for the patient [2]. The legislator in the Criminal Code of Georgia approached the issue in more detail, providing in Art. 246 criminal liability not only for illegal medical but also pharmaceutical activity [3]. However, for example, the Criminal Codes of Lithuania, Estonia, Uzbekistan, Azerbaijan do not contain this provision at all, proposing to resolve the issue of the responsibility of the perpetrators within the limits of the responsibility for crimes against life and health (negligent homicide, negligent bodily harm, etc.) [4].

Statistics of registered crimes against public health and public morals in Georgia show an increase in crimes of this category. Thus, in 2017, 93 were registered; 2018 - 185; 2019 - 157; during January-March 2020 - 57, which is 46.15% more than last year [5].

Taking into account the statistical indicators, the analysis of investigative practice in Ukraine showed that over the last five years, 30 cases of illegal medical activity have been registered in Ukraine. In particular, in 2014 - 4 criminal proceedings of the investigated category were initiated; in 2015 - 4; in 2016 - 3; in 2017 - 8; in 2018 - 3; in 2019 - 8; during January-March 2020 - 2 criminal proceedings concerning illegal medical activity [6]. This analysis indicates the trend of this negative phenomenon and highlights the relevance of the study due to the fact that only the small number, namely 9 of them, were indicted and sent to court. Actually, due to the shortcomings in the legal regulation of pre-trial investigation, the absence of a developed methodology for investigation of illegal medical activity the specified type of crimes is not actually revealed, and the small number of perpetrators are prosecuted.

Most of these deficiencies in the investigation of illegal medical activities, practices, are associated with the improper organization of the investigator's interaction with the bodies and units

involved in the investigation process. This was indicated by more than 82% of the pre-trial investigators, operational units of the National Police of Ukraine and the prosecutor's office interviewed by us. Such classification is related to the consolidation or absence of consolidation in the criminal procedural law of the grounds and order of the certain type of interaction between the investigator and the specialist. In addition, courts have repeatedly emphasized the importance of the evidences obtained through the use of specialized knowledge. In particular, this is underlined by the legal position of the European Court of Human Rights. Thus, in the *Bendersky vs. Ukraine* judgment, the court noted that the sound medical opinion plays significant role in the resolution of cases concerning the provision of medical care to the patient [7]. Nevertheless, in the course of our survey, in the process of investigating illegal medical activity, the decisive role of interaction with medical specialists was emphasized, as 73.8% of respondents noted with confidence that it was the specialist in the field of medicine that would fully contribute to the effective conduct of the pre-trial investigation of this criminal proceedings category. Scholars have also repeatedly emphasized the importance of using special medical knowledge by involving the specialist in criminal investigations separating the participation of physicians as specialists in the conduct of investigative proceedings, in the form of consultations, including doctors (cardiologists, traumatologists, surgeons, etc.) in formulating the necessary medical questions for the investigator in planning the investigation [8].

In order to discover the object of the study, first of all, let's try to find out the concept and procedural status of the specialist in the national Criminal Procedure Codes (hereinafter - the CPC) of certain countries.

Thus, in the scientific literature, the health professional is defined as the person not interested in the results of pursuing with higher medical education, the relevant specialty as needed, professional experience who has medical knowledge and can assist an investigator, prosecutor, trial judge or court or court investigation and litigation on issues requiring appropriate specialist knowledge [9].

Part 9 of Art. 111 of the CCP of Georgia, contains the norm according to which the party conducts investigative action with the participation of the expert if it requires special professional knowledge. That is, the Georgian legislator is limited only with the activities of the expert as the person and involved in investigative actions [10].

Most European criminal procedural laws distinguish both expert and specialist. According to Art. 89 of The CPC of the Republic of Lithuania, the specialist is the person who has the necessary special knowledge and skills, who is tasked to conduct an investigation of an object and to draw its own conclusion or explanation of issues that fall within its competence. The specialist, as in the CPC of Poland, may be an official of the pre-trial inquiry or investigation bodies, as well as the persons who do not work there. Also, the Lithuanian legislature made the distinction, in accordance with Part 3-4 of Art. 89 CPC of Lithuania, court medical examiners are specialists who carry out examinations of a human body or corpse; forensic psychiatrists and forensic psychologists are specialists who conduct examinations of a person's mental state. With regard to the duties of the specialist, he is required to appear at the call of the authorities, the pre-trial investigation, the prosecutor or the court; to draw independent conclusions, to give explanations about special issues that arise during the conduct of investigative action. For making deliberately false conclusions and providing false explanations, the specialist is criminally responsible for Art. 235 of

the CC of Lithuania [11]. Art. 113 of the CPC of Latvia, defines the specialist as the person providing assistance with the use of his specialized knowledge or work skills in the particular field. [12]. According to Art. 205 The CPC of Poland, both expert and specialist have specialized knowledge, except that the expert is on the expert list and the specialist is not. In addition, the expert carries out the activity on the basis of the collected evidence, and the specialist carries out the actual activity in their collection. According to § 1 Art. 205 of the CPC of Poland, the specialist is empowered with most of the power delegated to the expert, with some exceptions and, if necessary, the specialist can be questioned as the witness (§ 2 Art. 206 of the CPC) [13].

Under Ukrainian criminal procedural law, there is the expert and the specialist, whose participation has much in common, but they are endowed with different procedural status. Thus, the expert in criminal proceedings is the person who possesses scientific, technical or other specialized knowledge, is entitled in accordance with the Law of Ukraine «On Forensic Expertise» to conduct an examination, and who is charged with the study of objects, phenomena and processes containing information about the circumstances of the commission of the criminal offense, and to give an opinion on the issues that arise during the criminal proceedings and relate to the sphere of his knowledge (Part 1 of Art. 69 of the CPC of Ukraine). In doing so, the expert is criminally responsible for the deliberately false conclusion, the refusal without valid reasons to perform the assigned duties in court, the failure to perform other duties (Art. 70 of the CPC of Ukraine). The specialist is the person who possesses special knowledge and skills in the use of technical or other means and can provide consultations during pre-trial investigation and judicial review on issues requiring relevant special knowledge and skills (Part 1 of Art. 71 of the CPC). The results of his activities are reflected in the protocol of the investigative (search) action and in the court log, as well as in the annexes to them in the form of drawn up plans, diagrams, graphs, figures, etc. [14]. Thus, by analyzing the procedural statuses of the specialist and the expert in the legislation of different countries, different positions of the legislator according to their functions in criminal proceedings have been established. At the same time, most legislative initiatives are limited with involving them in certain procedural actions by providing consultations on the use of specialized knowledge.

In general, it should be noted that the main purpose of engaging the specialist is to increase the practical capabilities of an investigator, prosecutor in the detection, seizure and fixation of evidences during investigative (search) actions to establish the truth in criminal proceedings [15].

In view of the method of investigation of crimes related to the conducting of illegal medical activity, the most striking features of interaction, due to the specificity of the object of the assault, are reflected in the cooperation of the investigator with persons with special knowledge, among which, first of all, is the forensic expert as well as the specialist who is the doctor with relevant specialization who, as the specialist, are involved in the investigation process basing on their specific medical knowledge. Most often, such interaction is carried out both in procedural (regulated by law) and not procedural (organizational-tactical) forms.

In general, the procedural forms of interaction between the investigator and the specialist, which, in particular, take place in the investigation of illegal medical activity, include the obligatory or optional involvement of the specialist to participate in investigative (search) actions. The following are among the non-procedural forms of interaction: 1) specialist consultations; 2) conducting departmental investigations on the request of the investigator; 3) mutual sharing of information; 4) joint work dur-

ing the adoption of separate procedural decisions, in particular, the termination of pre-trial investigation, when the suspect was ill with a serious illness, which makes it impossible for him to participate in criminal proceedings (paragraph 1 of Part 1 of Art. 280 of the CPC).

We believe that, in practice, in investigating crimes conducting illegal medical activity, procedural and non-procedural forms of interaction of the investigator with the person with specialized knowledge are interrelated and can be applied within the same procedural action. For example, the forensic expert or physician, when involved as the specialist in the review and seizure of medical records, not only indicates the relevant basic and derivative medical documents relevant to the case under investigation (procedural form), but also provides advisory information on the use of such documentation during the conducting of forensic examination on the materials of criminal proceedings (non-procedural form).

The process of interaction of the investigator with the specialist is complex, so it is advisable to characterize it taking into account the peculiarities of certain stages of investigative (search) actions, such as: 1) organizational or preparatory; 2) research, which is ongoing during the investigative (search) action; 3) the stage of evaluation of the joint activity of the specialist and the investigator, which is the evaluation of the collected materials and promotion of versions; 4) forming of the questions list if examination is needed; 5) advisory, which is to accompany the entire investigation until the final decision in criminal proceedings is taken [16].

So, upon the receipt of the report of the offense related to the conducting of illegal medical activity and its entry in the Unified Register of Pre-trial Investigations, after which the pre-trial investigation starts, the investigator takes organizational measures to commence the investigation. Therefore, the inspection of the scene is the primary investigative action, provided that the victim immediately addresses the law enforcement agency with the statement of the crime. In such case, the investigator should ensure the presence of the forensic expert or medical specialist (physician) as well as the forensic specialist in preparation for the departure to the scene.

The idea of the universal knowledge of the latter in the investigated category of criminal proceedings may lead to poor investigative (search) action, since the forensic specialist does not have the full amount of medical knowledge needed to evaluate the course of medical care or the possible traces of such actions by the doctors.

The normative basis for involving the specialist in participating in investigative (search) actions, in the inspection of the scene in particular, is the requirements of the CPC of Ukraine and the number of by-laws [17]. With regard to the use of additional forces and facilities, there is the opportunity to involve a specialized mobile laboratory in Ukraine, including specialists who possess specialized knowledge and can provide consultations during the pre-trial investigations on issues requiring special knowledge and skills, as well as direct technical assistance for the parties of criminal proceedings during pre-trial investigation [18; 19]. In our opinion, in order to clarify the response to the scene of the crime related to medical activity, it is necessary to amend the mentioned instruction and to include the medical professional (forensic expert or doctor of the relevant category) in its composition.

If there is also a corpse on the scene, the forensic expert, together with the medical examiner or physician, provide the investigator with methodological recommendations on the rational procedure for the inspection of the corpse and its description in the record. The medical examiner or physician will assist the investigator in describing the anatomical features of the corpse, the traces on the corpse, the visible injuries and other circumstances that may be rel-

evant for the investigation. Usually the appropriate expert makes probabilistic conclusions about the event and mechanism of the crime, about the causes of death of the victim. Therefore, the specialist may assist the investigator in formulating certain provisions to properly describe in the record some items, specialty information, etc. that may be crucial to further investigation.

The importance of involving the specialist in the relevant medical field in the search should also be emphasized. The medical examiner or medical officer involved in the investigation as the expert may, firstly, basing on the nature of the illness of the victim, roughly reconstruct for the investigator the order of the medical measures taken, and secondly, indicate the medical documents to be seized, where there should be displayed the course of each medical manipulation and its consequences. The medical specialist may also draw the investigator's attention to the peculiarities of the storage conditions, the use of individual medicines and the disposal of their packaging. In the course of the examination, the medical specialist, together with the forensic expert, assists the investigator in the collection of objects for expert research, in particular forensic examination on the materials of the proceedings and, in our opinion, often such specialist, in particular during the inspection of the scene or search of the actual existence of unlawful medical activity, may sometimes identify and focus the investigator's attention on things, objects, or traces that are relevant to the investigation but are left by the investigator without the attention.

Quite often during investigative (search) actions (in particular, inspection of the scene, search, etc.), it is necessary to conduct minimal special investigations in order to establish certain characteristics of the detected object or substance to take them into account in the further course of investigative (search) action. In this case, the investigator obtains this knowledge through such non-procedural form of the use of specialized knowledge, as the preliminary study, which may be conducted by the medical specialist who is involved as the specialist in the investigation (search) action. According to V.M. Makhov, the preliminary study of physical evidence (or rapid research) carried out by specially educated persons can be considered as the tactical technique used in the work with versions and planning of the investigation, as well as when deciding the need for examination, etc. [20]. In the course of such research, the relation of the detected traces to the investigated event is most often clarified, the mechanism of their formation is established, the signs of the trace-forming objects are determined, the possibility of identification research is determined, the information on the probable signs, habits and other data characterizing the persons who participated in the specified event is collected.

The involvement and interaction of the medical specialist with the investigator during the inspection of the scene and the search is reflected in the protocol of the procedural action. The minutes may be annexed by written explanations of the specialists involved in the relevant procedural action. It should be noted that the issue of the possibility of fixing in the protocol of the investigative (search) action of consultations and explanations of the specialist involved in the investigation is still under discussion. However, emphasizing that the specialist involved in litigation during investigating illegal medical activity can independently observe and investigate identified objects or processes, giving them the assessment in terms of their specific knowledge and skills. In this regard, we consider it expedient to legislate for the mandatory annexation to the minutes of the relevant procedural action of such explanations, where the specialist can describe his advisory and research activities in detail and give his respective

opinions. Such information may be provided in the form of the specialist reference.

Therefore, establishing the coordination between the investigator and the specialist in the examination of the scene and the search, in the course of criminal proceedings concerning illegal medical activity, will facilitate the provision of qualified assistance to the investigator in the search, seizure and packing of traces and physical evidence; conducting preliminary on-site object surveys for prompt guidance; forming preliminary conclusions regarding determining the probative value of the information found, diagnosing the identity of an unknown offender, modeling the event of the crime, promoting versions, and more.

Further, the activity of the specialist should be directed to the analysis and evaluation of the results of the inspection and search, particularly, revealed documents and objects during their carrying out of. In doing so, he draws the investigator's attention to the particularities of the particular piece of evidence, for example, to indicate that the records on the patient's card with the relevant medical records do not match. The relevant specialist assists the investigator in forming the investigative versions, determining the following tactical and procedural actions, assessing the sufficiency and completeness of the collected materials for the purpose of examination. It should be noted that assistance in the formulation of versions for the investigation at this stage is the important function, since during the examination of the scene with minimal initial data, the investigator makes the most important information and tactical decisions in the proceedings concerning: the nature of the incident; circumstances, facts, phenomena that characterize the individual sides of this event; possible directions for finding evidence. Independent decision-making by investigators is complicated by the specificity of the knowledge sphere in which the crime was committed.

It should be noted that from the moment of commencement of criminal proceedings on conducting illegal medical activity, the investigator should take measures to collect the objects relevant to the expert investigation which relates to the event of the crime. The important place in this process is also given to the specialist. He can consult not only on the progress of the particular investigative (search) action, but also on the prospect of expert research and the volume and completeness of the materials required to conduct them. In the meantime, we believe it is procedurally effective to ensure involvement of the expert in the proceedings as the specialist expert who will carry out the examination. In the context of the crime category we are investigating, such recommendation is reasonable so that the forensic expert can, firstly, personally observe the peculiarities of the crime in the environment, and secondly, assist the investigator in identifying and removing medical records and other objects, necessary for future examination.

The most conducted investigative (search) action, the effectiveness of which in the investigation of the facts of illegal medical activity depends largely on the level of interaction of the investigator with the specialist, is interrogation. This is especially relative to the interrogation of medical witnesses and of the suspect himself. For V.S. Maximov, the specialist is involved in the interrogation, when the investigator knows that the interrogator is well-versed in special issues, has practical experience in the relevant field, and the investigator himself does not have sufficient content of concepts [21].

In preparation for questioning, the specialist examines the materials available for the investigation together with the investigator. This determines the tactics of using certain documents or other material evidences in the course of future interrogation,

taking into account the qualifications of the interviewed “doctors”. The specialist may indicate information in the medical records that contradicts with the version given by the interviewee. This tactical technique is used to increase the effectiveness of the interrogation through the announcement of expert opinions, the results of individual investigative (research) actions, indicating the possibility of the interrogator being at the crime scene [22]. The specialist helps to prepare the list of questions for conducting investigative (search) action, identifying the main ones, additional, control. He is able to indicate how the information obtained from previous investigative actions should be verified. The organizational aspects of the specialist’s actions during the interrogation are also specified: the expected moment of commencement of the actions, their nature, the instructions of the investigator and his reaction to the actions of the specialist are discussed. The decision to participate in the working stage of the interrogation of the specialist is made by the investigator, taking into account his awareness and personal characteristics of the interviewee.

Along with participating in the formation of the volume of materials for research, the specialist can provide effective assistance in formulating questions for examination or in correcting them, if they are already outlined by the investigator. The need for involvement at this stage of the specialist is determined by the specificity of issues in the field of medical activities which are presented to the expert. That is, the specialist can point to issues that either will not provide new evidential information or do not require expert research, since the demand for new medical documents is sufficient.

In the course of the investigative experiment with the suspected person, in our opinion, one should also involve the specialist in the particular medical field, since, by demonstrating and telling about the circumstances of the crime, the suspect who has some medical knowledge, in order to counteract the investigation, may conceal certain facts interested in the investigation. Participation of the medical specialist during the investigative experiment is also useful because during carrying it out for additional information, together with the investigator, the tactical technique based on the teaching of psychology about the dependence of memories on human activity can be applied. Its essence is that the person reproduces on the spot only what he remembered. During such playback, it is often possible to revive the person’s memory so that the investigator receives very detailed information about seemingly completely forgotten facts. In this case, the person not only remembers certain facts, but also corrects them, rejecting everything that does not agree with the real situation, specifies certain information and gives justification for what was reported during the interrogation [15].

The common non-procedural form of using specialized medical knowledge in the course of an investigation is to obtain investigative consultations from specialists outside the scope of investigative (search) actions. Such specialist help is used in preparation for interrogations, investigative experiments, searches and examinations, etc. The specialist assists in the development of investigative versions and the preparation of the investigation plan in general, as well as the plans of conducting investigative (search) actions, assisting the investigator in determining the content and the order of posing questions related to medical or other specialized activity, and the order of committing individual actions. However, such assistance is not reflected in the protocols of the relevant investigative (search) actions because the actions of the specialist are not aimed directly at investigating the circumstances of criminal proceedings but at providing the investigator with specific information in the desired field of science. Further, the investigator decides on the tactics of using the information obtained at certain stages of the proceedings.

Such actions were reflected in the sentence of the Sikkhiv District Court of Lviv dated by February 14, 2014, which sentenced Mr. P., who, using deliberately false educational documents, including: the duplicate of diploma of the Russian State Medical University of the Federal Agency for Health and Social Development of Russia on his graduation in 1991 from the Second Moscow Order of Lenin State Medical Institute named after M. I. Pirogov with false information about his higher education and qualification «doctor» in the specialty «Medical»; diploma of the candidate of medical sciences of the Moscow Medical Academy named after I.M. Sechenov with false information about awarding him the scientific degree of the candidate of medical sciences; diploma of the doctor of medical sciences, issued by the Higher attestation commission of the Russian Federation with false information about awarding him the scientific degree of the doctor of medical sciences, - conducted illegal medical activity which caused grave consequences for patients, namely, carried out operations of patients which resulted in their death (not the one human life) [23]. In the course of the pre-trial investigation and trial, the court assessed the large amount of evidences obtained as the result of the actions of medical specialists regarding the availability of medical knowledge, education and related medical manipulations of the accused. As the result of evaluating the numerous evidences, the court found Mr. P. guilty of unlawful medical activity. We see that another non-procedural form of the investigator’s interaction with the specialist, which is to consult the investigator regarding the presence or absence of education, knowledge or special authorization for medical activity, could be stated.

Involvement of the specialist with medical knowledge at the stage of formation of questions to be asked for forensic research will avoid the need for the appointment of additional forensic research. In our opinion, the most common reason for the appointment of additional forensics in the course of the investigation of illegal medical activity is the incompleteness of the initial conclusion of the expert examination, which is connected with the failure to put to the investigator the relevant questions, which should and could be examined by the expert commission during the study of the objects provided. Every medical case, that is the medical malpractice case, has the direct connection with the examination, so the question of adherence and admissibility of the evidence raises every time. Professionals in the provision of medical care have the direct touch on the examination of the issue of adherence and admissibility of records arises every time [24].

Within this form of application of special knowledge in the investigation of illegal medical activity, consultations of the investigator with the specialist on the content of the expert opinion are also appropriate. As the investigative bodies do not possess adequate specialist knowledge (or do not fully possess) and can evaluate it by formal criteria, which is not identical to the professional level of the expert.

Finally, one should not underestimate the form of non-procedural application of specialized knowledge, such as the direct familiarization of the investigator with the specialized literature and normative acts related to the investigation of illegal medical activities. This enables the investigator to navigate somewhat more effectively in medical terminology, independently evaluate certain medical actions, improve the interaction of the investigator with experts, specialists, etc., as well as make it easier to establish psychological contact with individuals during investigative (investigative) actions.

Conclusions. We summarize that the interaction of the investigator with the person who is not interested in the results

of the investigation in the course of the investigation of illegal medical activity is the important condition for establishing the truth in criminal proceedings. From the above, it is clear that this element of the activity of the person conducting the pre-trial investigation is rather multi-vector in content and subjective composition. Tactically organized collaboration enables the investigator to fully execute his analytical function, the primary role of which is to identify signs that indicate the relationship of the object to the event and circumstances that are material to the pre-trial investigation. Therefore, in particular, basing on the analysis of the results of the questionnaire of practitioners, we consider it appropriate to develop appropriate instructions that would organizationally regulate the interaction of the pre-trial investigation bodies with the forensic expert or the relevant doctor involved as the specialists in the process of investigating crimes committed in medical industry.

It can also be argued that the forms of interaction highlighted in the theory are not autonomous, since, as the analysis of interaction in the investigation of crimes related to illegal medical activity demonstrates within the framework of one investigative action, it takes place both in procedural and organizational-tactical cooperation forms. The specialist, performing the functions assigned to him by the criminal procedural law, also provides advisory assistance to the investigator regarding the organization and tactics of both the relevant investigative action and the direction of the investigation as a whole. In addition, if the methodological assistance provided by the specialist as the procedural participant in the investigative action is required to be reflected in at least the relevant protocol, then the recommendations made during the consultative activity are not obligatory.

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SUMMARY

USE OF SPECIAL MEDICAL KNOWLEDGE BY A PRACTITIONER DURING INTERACTION WITH INVESTIGATOR IN THE INVESTIGATION OF ILLEGAL MEDICAL ACTIVITY

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The article deals with issues related to the use of specialist medical knowledge by a specialist in the investigation of illegal

medical activities. The procedural status of a specialist in criminal procedural legislation of Georgia, Ukraine and certain EU countries has been carried out. The analysis of forms and directions of the use of special knowledge in the course of interaction with the investigator, allows to establish a special value for the process of proving the involvement of a specialist in the field of medicine to conduct procedural actions. It was found that by means of special medical knowledge in the course of the investigation there will be more chances to establish the circumstances to be proven, to properly record the evidence and to increase the effectiveness of the procedural action. Based on the consultations with a medical specialist, in the course of organizational and technical cooperation with the investigator, it will help to identify all circumstances that will influence the qualification of the person's actions in conducting illegal medical activity. On the basis of comparison with the Ukrainian legislation, the role in the form of involvement in procedural actions is determined; coverage of procedural and forensic aspects of using specialist medical knowledge by a specialist. Emphasis is placed on procedural interactions between the investigator and the medical specialist by involving his investigative (search) actions, such as: review of scene of action, search, interrogation and investigative experiment. While characterizing the non-procedural form of interaction between the investigator and medical specialist, the role of the latter in providing consultations on the preparation and conduct of individual procedural actions, reference and advisory assistance regarding the availability of special medical knowledge and consequences resulting from treatment, as well as in formulating questions during the appointment of forensic investigations during the investigation of illicit medical activities has been established.

Keywords: specialist, doctor, medical activity, interaction, investigative actions, investigation, criminal proceedings.

РЕЗЮМЕ

ИСПОЛЬЗОВАНИЕ СПЕЦИАЛЬНЫХ МЕДИЦИНСКИХ ЗНАНИЙ СПЕЦИАЛИСТАМИ ВО ВРЕМЯ ВЗАИМОДЕЙСТВИЯ СО СЛЕДОВАТЕЛЕМ В ХОДЕ РАССЛЕДОВАНИЯ НЕЗАКОННОЙ ЛЕЧЕБНОЙ ДЕЯТЕЛЬНОСТИ

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В статье рассматриваются вопросы, связанные с использованием специальных медицинских знаний при расследовании незаконной лечебной деятельности. Проведено исследование процессуального статуса специалиста в уголовном процессуальном законодательстве Грузии, Украины и отдельных стран Европейского Союза. Анализ форм и направлений использования специальных знаний в ходе взаимодействия со следователем позволяет констатировать особое значение привлечения специалиста в области медицины к проведению процессуальных действий. Установлено, что с помощью специальных медицинских знаний в ходе расследования с большей вероятностью можно будет установить обстоятельства, подлежащие доказыванию, должным образом зафиксировать доказательства и увеличить результативность проведения процессуального действия. Консультации

специалиста-медика в ходе осуществления организационно-технического взаимодействия со следователем помогут установить обстоятельства, которые влияют на квалификацию действий лица в совершении незаконной лечебной деятельности. Определены формы привлечения специалиста-медика к проведению процессуальных действий; освещены процессуальные и криминалистические аспекты использования специальных медицинских знаний. Акцентируются процессуальные взаимодействия следователя и специалиста-медика путем привлечения его к розыскным действиям: осмотр места происшествия, обыск, допрос и следственный эксперимент. Во время характеристики непроцессуальной формы взаимодействия следователя и медицинского специалиста установлена роль последнего в предоставлении консультаций по поводу подготовки и проведения отдельных процессуальных действий, справочно-консультативной помощи по поводу наличия специальных медицинских знаний и последствий лечения, а также в формулировке вопросов при назначении судебных экспертиз в ходе расследования незаконной лечебной деятельности.

რეზიუმე

სპეციალისტების მიერ სპეციალური სამედიცინო ცოდნის გამოყენება გამოძიებულთან ურთიერთობისას არაკანონიერი საექიმო საქმიანობის გამოძიების დროს

აკუნტის, რ.ბლაგუა, ბ.სტეციკი, ი.სიხკოვსკაია, პ.გარასიმი

ლვოვის შინაგან საქმეთა სახელმწიფო უნივერსიტეტი, უკრაინა

სტატიაში განხილულია სპეციალისტების მიერ სპეციალური სამედიცინო ცოდნის გამოყენებასთან დაკავშირებული საკითხები გამოძიებულთან ურთიერთობისას არაკანონიერი საექიმო საქმიანობის გამოძიების დროს. ჩატარებულია სპეციალისტის პროცესუალური სტატუსის კვლევა საქართველოს, უკრაინის და ევროკავშირის ცალკეული ქვეყნების პროცესუალურ კანონმდებლობაში. სპეციალური ცოდნის გამოყენების ფორმებისა და მიმართულებების ანალიზი გამოძიებულთან ურთიერთობის დროს იძლევა საფუძველს იმის აღნიშვნისათვის, რომ პროცესუალური მოქმედებების გატარების დროს მედიცინის სფეროს სპეციალისტის ჩართვას განსაკუთრებული მნიშვნელობა ენიჭება. დადგენილია, რომ სპეციალური სამედიცინო ცოდნის დახმარებით გამოძიების დროს მეტი ალბათობითაა შესაძლებელი მტკიცებულებითი გარემოებების დადგენა, ასევე, მტკიცებულებების სათანადოდ დაფიქსირება და პროცესუალური მოქმედებების შედეგიანობის გაზრდა. ექიმ-სპეციალისტის კონსულტაციებმა გამოძიებულთან ორგანიზაციულ-ტექნიკური ურთიერთქმედების განხორციელების დროს შესაძლოა გაადვილოს პირის ქმედებების კვალიფიკაციაზე მოქმედი გარემოებების დადგენა არაკანონიერი საექიმო საქმიანობის გამოძიების დროს. განსაზღვრულია პროცესუალურ მოქმედებებში ექიმ-სპეციალისტის ჩართვის ფორმები; განხილულია სპეციალური სამედიცინო ცოდნის გამოყენების პროცესუალური და კრიმინალისტური ასპექტები. აქცენტირებულია გამოძიებლის და სპეციალისტ-მე-

დიკოსის პროცესუალური ურთიერთობანი მისი ჩართვის გზით საგამოძიებო მოქმედებებში: შემთხვევის ადგილის დათვალიერებაში, ჩხრეკაში, დაკითხვასა და საგამოძიებო ექსპერიმენტში. გამომძიებლის და მედიცინის სპეციალისტის ურთიერთობის არაპროცესუალური ფორმების დახასიათების დროს დადგენილია ამ უკანასკნელის როლი კონსულტაციების გაწევაში

ცალკეული პროცესუალური მოქმედების მომზადებასა და გატარებაში, საცნობარო-საკონსულტაციო დახმარებაში სპეციალური სამედიცინო ცოდნის და მკურნალობის შედეგების არსებობის თვალსაზრისით, ასევე, საკითხების ფორმულირებაში სასამართლო ექსპერტიზის დანიშვნისას არაკანონიერი საექიმო საქმიანობის გამოძიების დროს.

РЕАЛИЗАЦИЯ ПРАВА НА ОХРАНУ ЗДОРОВЬЯ ПО МАТЕРИАЛАМ ПРАКТИКИ ЕВРОПЕЙСКОГО СУДА ПО ПРАВАМ ЧЕЛОВЕКА

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Мысль о том, что люди обладают неотъемлемыми правами, коренится во многих культурах и древних традициях. История человечества доказывает, что ценности, воплощенные в правах человека, являются реакцией на всемирные потребности людей и поиск справедливости. Право на охрану здоровья является неотъемлемой составляющей прав человека, личным немущественным правом, обеспечивающим его естественное существование, ценностью и основой для всех иных прав, теряющих свой смысл и значение в случае наступления смерти.

Общественные отношения в сфере защиты прав человека на охрану здоровья, в связи с их динамичностью, нуждаются в постоянном законодательном закреплении, особенно в странах с романо-германской системой права. Судебная практика позволяет сформировать общее представление о степени возможности реализации человеком права на охрану здоровья в своем государстве. Так, в связи с ограничительными мерами, направленными на борьбу с пандемией COVID-19, вызванной коронавирусом SARS-CoV-2 (– COVID-19), государства-члены Совета Европы начали сообщать Генеральному Секретарю Совета Европы о дерогации (отступлении) от некоторых положений Конвенции о защите прав человека и основных свобод (далее – Конвенция), согласно ст. 15 Конвенции. На сегодня заявления о дерогации из-за связанных с COVID-19 мер сделали: 16.03.2020 – Латвия; 17.03.2020 – Румыния; 18.03.2020 – Молдова; 19.03.2020 – Армения; 20.03.2020 – Эстония; 23.03.2020 – Грузия.

Однако законодатель не всегда успевает реагировать на изменение отношений в сфере здравоохранения, путем принятия соответствующих нормативных положений. Поэтому во многих случаях правоприменителю приходится устранять пробелы в этой сфере, в том числе ссылаясь на решение Европейского суда по правам человека (ЕСПЧ). Украина как страна-участник Конвенции, ратифицированной Верховной Радой Украины в 1997 году, обязательно должна применять национальными судами прецедентное право, создаваемое ЕСПЧ [1,5]. Еще одним основанием для непосредственного выполнения решений ЕСПЧ в Украине является Закон Украины «О выполнении решений и применении практики Европейского суда по правам человека» от 23.02.2006 г. [3]. При этом сами решения ЕСПЧ основываются на Конвенции.

Целью статьи явился комплексный анализ возможности реализации права человека на охрану здоровья по материалам практики Европейского суда по правам человека.

Материал и методы. При написании статьи в качестве эмпирической базы исследования авторами использовалась практика ЕСПЧ и судебная практика Украины. Нормативно-правовую основу данного исследования составили международные конвенции и украинское законодательство. Теоретической основой статьи явились научные труды украинских и зарубежных ученых. Речь идет о научных публикациях В.И. Теремецкого (в соавторстве), где дан анализ существующих моделей организации системы здравоохранения в различных зарубежных странах, а также обоснована возможность внедрения наиболее оптимальной из них в Украине [18]; С.В. Книша (в соавторстве), который рассмотрел различные направления модернизации государственного управления системой здравоохранения в Украине и предложил практические рекомендации по его совершенствованию с учетом евроинтеграционных процессов [17]; О.М. Петрое (в соавторстве), которая, изучив социально-экономические условия, влияющие на выбор вида медицинского страхования, обосновала необходимость перехода в Украине к системе общеобязательного государственного медицинского страхования [2]. Авторы статьи опирались на достижения ученых-процессуалистов стран ЕС, в частности изучали проблемы справедливого судебного разбирательства при защите обвиняемых с психическими расстройствами в уголовном судопроизводстве, затронутые М. Мейсманом, который указал на необходимость присутствия и помощи (назначенного) законного представителя или соответствующего взрослого человека как во время каких-либо действий в полицейском участке, так и судебных слушаний [15].

Методологическое обеспечение данного исследования осуществлялось с использованием общенаучных и специальных методов познания, избранных с учетом цели работы. Так, гносеологический метод использовался для исследования общих предпосылок, средств и закономерностей развития механизмов защиты права человека на охрану здоровья, в том числе и в ЕСПЧ. Диалектический метод – при поиске правильных подходов к решению теоретических и правовых проблем, возникающих в правовом регулирова-