

*D.M. Tolpygo*, Attorney Prosecutor's Office  
Kiev district of Odessa, a lawyer Class 2, Applicant  
National University "Odessa Law Academy"  
the Department of Criminalistics  
Pionerska str, 2, Odessa, 65009, Ukraine

## **FEATURES SURVEY PUBLIC INACCESSIBLE PLACES, HOME OR OTHER PROPERTY OF A PERSON**

### **Summary**

The paper investigates the basics and features of the survey of publicly inaccessible places, housing and other possessions of a person as an independent covert investigative action in criminal proceedings. The factual and legal bases of the survey of publicly inaccessible places, housing and other possessions of a person are clarified.

**Key words:** unspoken investigative actions, publicly inaccessible places, authorized the operational units.

**Formulation of the problem.** Most of the crimes committed in secret, carefully criminals disguise their activities, the number of latent crimes. Vowel investigative actions is not always possible to establish those involved in committing crimes and prove their guilt. That is why the only source of information is evidence based materials covert investigative (detective) actions, including examination of inaccessible public places, home or other property. Said tacit investigative (detective) the effect of limiting the constitutional rights of citizens for its performance should comply with a number of special requirements and have strong knowledge of criminal procedural law and its application [1, p.34].

Ukraine Constitution guarantees everyone the right to know their rights and duties (Article 57), which can not be limited, except as provided by the Constitution of Ukraine (Article 64) [10]. These and other constitutional rights and freedoms are

guaranteed and ensured person during criminal proceedings, during which apply measures of criminal procedure compulsion.

One of the guarantees of rights and legitimate interests of the person in criminal proceedings is clear and unambiguous procedural regulation of activities of the criminal process to comply with the procedural form during the investigation (search) and other proceedings. Instead, the presence of conflicts of criminal proceedings in Ukraine causes the appearance of contradictions in legal regulation of criminal procedure relations and differences in the theory of criminal procedural law and practice of investigation of criminal offenses. The above applies to certain aspects of the proceedings covert investigative (detective) actions, including inspection of inaccessible public places, home or other property.

Mergers in the system of investigation open and covert methods of gaining information about upcoming and committed crimes while increasing constitutional guarantees of rights and freedoms is an effective tool for combating crime, which will serve as the tasks of criminal proceedings across the whole country and will act as the key to high-level policing state [2, p. 15-23].

Legislative regulation of the procedure of the survey publicly inaccessible places, home or other property is flawed because not clearly defined tactics installation and removal of means of audio, video control person under this covert investigative (detective) action, which leads to a lack of regulated primarily by law performance of the act authorized the subject of criminal proceedings.

**Analysis of recent research and publications.** Some aspects of the institute of investigative actions examined both domestic and protsesualisty criminologists and scientists of the CIS countries: Yu.P. Alenin, R.S. Belkin, O.O. Bondarenko, V.V. Vapnyarchuk, V.I. Galagan, U.M. Groshevuy, N.S. Karpov, E.D. Lukyanchikov, V. Mariniv, V.T. Nor, M.A. Pohoretsky, U.G. Torbin, U.M. Chornous, B.Yu. Shepitko, M.E. Shumilo and others. Their works are important to develop the tactics of the survey publicly inaccessible places, home and other property in criminal proceedings.

Specified circumstances in their totality determine the importance of the subject article, which contributed to its selection for the study.

**The purpose of the study** is to develop procedural and tactical bases of the survey publicly inaccessible places, home and other property in criminal proceedings modern conditions of Ukraine.

The object of investigation - criminal procedural legal relations arising during the examination of inaccessible public places, home and other property in criminal proceedings of Ukraine.

Subject of research - survey publicly inaccessible places, home and other property in the system of covert investigative (detective) of action.

**Presenting main material.** The legal basis, the implementation of covert investigative (detective) actions operational units of the Interior, is the written authorization of the investigator or prosecutor in criminal proceedings. In this case, at the time of these actions, the employee becomes operational division of powers investigator. Please note that workers operating units have the right to exercise procedural actions in the criminal proceedings on its own initiative or handle petitions to the investigating judge or prosecutor (Article 41 of the Code of Ukraine) [3].

Inspection of inaccessible public places, home or other property law relates to covert investigative (detective) actions of information and methods of fact which, except as provided by CPC of Ukraine, are not subject to disclosure.

Said tacit investigative action conducted: - first, in cases where the information about the crime and the person who committed it, can not be obtained by other means .; secondly, only in criminal proceedings concerning serious or especially serious crime; Thirdly, on the basis of decisions investigating judge within the territorial jurisdiction of which the pre-trial investigation.

When investigating judge is to be understood of persons referred to in Art. 247 Code of Ukraine, that the consideration of applications for examination publicly inaccessible places, home or other property should make head or in his definition of another judge of the Appellate Court of the Autonomous Republic of Crimea, the Court of Appeal region, Kyiv and Sevastopol within the territorial jurisdiction of which the pre-trial investigation.

To conduct the survey publicly inaccessible places, home or other property is entitled investigator who carries out pre-trial investigation of the crime, or on behalf of - authorized investigative units of internal affairs bodies, security bodies exercising control over compliance with tax laws of the State Penitentiary Service Ukraine, the State Border Service of Ukraine, State Customs Service of Ukraine.

This Code of Ukraine (ch. 2, Art. 233) for housing a person understands any room that is in permanent or temporary property, regardless of its purpose and legal status, and suitable for permanent or temporary residence therein of individuals, and all parts of the premises. For example, in this sense, to housing include: 1) personal house with all facilities intended for permanent or temporary residence in them, and those areas which, although not intended for permanent or temporary residence in them, but is part of building; 2) any dwelling, regardless of ownership, which belongs to the housing and is used for permanent or temporary residence (house, apartment building any form of property, private room in an apartment, etc.); 3) any other premises or buildings that do not belong to housing, but adapted for temporary residence (cottage, garden house, etc.).

It is no accommodation specifically designed for the detention of persons whose rights are restricted by law (investigatory isolators, temporary detention facilities of detention of persons in respect of sentence, etc.). In other possessions refers vehicles, land, garages, shops, cafes, bars, canteens, restaurants, shops, factories, offices other buildings or premises community, service, commercial, industrial and other purposes that are in the possession of persons, ie objects (natural and artificial origin), whose properties allow to penetrate there and keep or hide certain objects (things value).

Publicly available place, which can not enter or in which it is impossible to be on legal grounds without the consent of the owner, user or their authorized persons. Premises that are specifically designed for the detention of persons whose rights are restricted under law (the room with the detention of persons in connection sentence, arrest, detention, etc.) are publicly available status.

By "penetration" means invasion nezakryte or closed (unlocked) space or housing. It can be done as overcoming obstacles (locks closed doors, windows, hatches etc.), And without this, such as using that person (s) left no space (housing) uncovered, unguarded. "Penetration" can also be performed using various technical devices and means, that is, when the desired result is achieved without entering the appropriate space [5].

Application investigator for permission to carry out this tacit investigative (detective) of action should be coordinated with the prosecutor.

Investigative judge shall consider the petition within six hours of its receipt. Consideration of a motion with the participation of the person who filed the petition.

At the request of the investigator must indicate:

- 1) the name of the criminal proceedings and its registration number;
- 2) a summary of the circumstances of the crime, in connection with the investigation of the petition is filed;
- 3) legal qualification of the crime indicating the articles (of the article) of the Criminal Code of Ukraine;
- 4) information on the person (s) and place for which it is necessary to conduct a survey publicly inaccessible places, home or other property;
- 5) the circumstances that give rise to the survey publicly inaccessible places, home or other property;
- 6) the term of tacit justification investigative (detective) of action;
- 7) justification of the impossibility of obtaining information about a crime and the person who committed it, in another way;
- 8) study the possibility of obtaining during tacit investigative (detective) actions evidence alone or in conjunction with other evidence may be essential to clarify the circumstances of the crime or the establishment of the persons who committed it [11].

A petition prosecutor attached extract from the Unified Register of pre-trial investigations in criminal proceedings, under which a petition is filed.

The decision to publicly survey inaccessible places, home or other property must be rendered investigating judge as prescribed in Articles 246, 248, 249 CPC of

Ukraine. In that judgment must always include its holding period that can be extended by an investigating judge in the manner prescribed in Article 249 CPC of Ukraine.

As a general rule validity investigating judge ruling on the tacit permission for investigative (detective) actions may not exceed two months.

If the investigator, the prosecutor believes that tacit investigative (detective) actions should continue, in consultation with the investigating prosecutor or prosecutor may apply to the investigating judge with a request to the adoption of resolution in accordance with Article 248 CPC of Ukraine.

During the survey allowed secret photographing, copying, mark detected objects using special chemicals establishment of means of audio, video person. Removal or replacement found during the examination of samples (items) for research permitted in exceptional cases with the permission of the actions. The use of means during the examination of inaccessible public places, home or other property is a necessary protective measure society and the state in the fight against crime. Limits of authority business use special equipment and conducting technical measures strictly governed by the laws of Ukraine. Carrying out technical activities with the use of special equipment is essential restriction of the rights and freedoms of exceptional and temporary nature, requires special regulatory regulation [6; 7; 8; 9].

To participate in the survey should involve specialists with skills relevant finding traces of fixing the situation, setting traps chemicals, technical audio and video control and more. Results of detailed record of professional certificates, acts that make up after the inspection, the exact definition of technical specifications introduced and applied technical means of data recording. Operational staff involved in the inspection of inaccessible public places, home or other property, fully instruct both the technical and organizational aspects of the meeting, and on compliance with conspiracy in the crime.

Having a court to conduct a public survey inaccessible places, home or other property, investigator (operating on behalf of the employee) and technical operations unit if necessary approaches to the study of the object, which is planned inspection

systems and types of protective devices, choose grounds for penetration into the room, trying to find out other necessary data determining the tactics of that tacit investigative (detective) actions.

In the survey conducted inspection of premises, buildings, terrain and objects located on them. Examination as inspection is visual, auditory and olfactory learning environment facility visits in order to identify, extract and study items that have a causal relationship with the circumstances of crimes, suspects and others. For example: When instructed investigator operatives visited the consent of the owner of the store, which constantly vchynyalys theft, and established a "chemical trap" on certain things, one of which in a few days was stolen. For traces remaining on hands and clothing of the suspect, the person was identified and arrested [1, s.39-40].

Consequently, the survey identified places investigator (operating on behalf of the employee) can learn the location of rooms, doors, furniture, the presence of any other items that may be relevant for the next assessment of the situation and making procedural or administrative decisions.

In accordance with Part 1 of Art. 252 CCP Ukraine fixing the course and results of undercover investigative (detective) of action should follow the general rules commit criminal proceedings. The results of tacit investigative (detective) of action drawn up, which, if necessary annexes attached.

Protocol on the implementation of the above actions with annexes no later than twenty-four hours from the time of termination sent to the prosecutor. The Prosecutor shall take measures to conserve received during the public inspection of inaccessible places, home or other property objects and documents that are planning to use in criminal proceedings. Persons whose constitutional rights were temporarily limited during the test publicly inaccessible places, home or other property, and the suspect, his lawyer must be notified in writing by the prosecutor or investigator on behalf of such restrictions. The exact time the message is determined taking into account whether or not the threats to an end the preliminary investigation, public safety, life or health of persons involved in the survey publicly inaccessible places, home or other property. Relevant information about the fact and the test results must be made within

twelve months from the date of termination, but no later than the date of the court to the indictment. Details of fact and methods of the survey publicly inaccessible places, home or other property, persons that it conducted and the information obtained as a result of, not be disclosed to persons to whom it has become known as a result of the discovery of materials other side in order, provided for by Article 290 CPC of Ukraine. If reports on the survey publicly inaccessible places, home or other property containing information on the private (personal or family) of others, defense counsel, and other persons who have the right to inspect the records, warned of criminal liability for the disclosure of information received of others. Making copies of the survey reports publicly inaccessible places, home or other property and annexes prohibited.

Those who conducted the inspection of inaccessible public places, home or any other property or been involved in their implementation can be questioned as witnesses. The interrogation of these persons may occur with preservation of confidential information about these people and using them on appropriate security measures provided by law.

**Conclusions.** Thus, the survey publicly inaccessible places, home or other property - a tacit investigative (detective) action, which has the right to conduct an investigator or on behalf of an employee operating unit, which is based in the survey defined objects, including the use of technical means by secret penetration, on the basis of decisions investigating judge to collect (identifying and fixing) information for meaningful criminal justice, public safety and state. Inspection of inaccessible public places, home or other property is exceptional as it limits the constitutional rights of citizens. This measure is carried out exclusively in criminal proceedings concerning grave or especially grave crimes, if the information about the crime and the person who committed it, can not get any other way. The Constitution of Ukraine guarantees the security of every citizen housing, non-interference in his private and family life. Prohibited the collection, storage, use and dissemination of confidential information about a person without his consent. Not allowed illegal entry in publicly available space, housing or other property of a person. The law makes an exception from the



rules in the interests of national security, the fight against crime, public order, rights and freedoms of others.

241

Obtained as a Result of covert investigative (detective) actions of information can become evidence in criminal proceedings solely by the court at the trial stage, after preliminary verification and evaluation prosecutor.

### *List of references*

1. Негласні слідчі (розшукові) дії : курс лекцій / Д. Й. Никифорчук, С. І. Ніколаюк, В. В. Поливода [та ін.] ; за заг. ред. Д. Й. Никифорчука. – К. : Нац. акад. внутр. справ, 2012. – 124 с.
2. Скулиш Є. Д. Негласні слідчі (розшукові) дії за кримінально-процесуальним законодавством України / Є. Д. Скулиш // Вісник Нац. акад. прокуратури України. – К., 2012. – № 2. – С. 15-23.
3. Кримінальний процесуальний кодекс України : наук.-практ. коментар / за заг. ред. В. Г. Гончаренка, В. Т. Нора, М. Є. Шумила. – К. : Юстиніан, 2012. – 765 с.
4. Кримінальний процесуальний кодекс України // Відомості Верховної Ради України. – 2013. – № 9-10, 11-12, 13. – Ст. 88.
5. Алгоритм дій працівників ОВС при підготовці та проведенні негласних слідчих (розшукових) дій [Електронний ресурс]. – Режим доступу: <http://bibl.com.ua/pravo/5492/index.html?page=22>
6. Про оперативно-розшукову діяльність : Закон України від 18.02.1992 р. № 2135-XII // Відомості Верховної Ради України. – 1992. – № 22. – С. 303.
7. Про організаційно-правові основи боротьби з організованою злочинністю : Закон України від 30.06.1993 р. // Відомості Верховної Ради України. – 1993. – № 35. – Ст. 358.
8. Про державну таємницю : Закон України від 21.01.1994 р. // Відомості Верховної Ради України. – 1994. – № 16. – Ст. 93.

9. Про інформацію : Закон України від 02.10.1992 р. // Відомості Верховної Ради України. – 1992. – № 48. – Ст. 650.

10. Конституція України : прийнята на п'ятій сесії Верховної Ради України 28.06.1996 р. з наст. змін. // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

11. Про затвердження порядку отримання дозволу суду на здійснення заходів, які тимчасово обмежують права людини, та використання добутої інформації [Електронний ресурс] : Постанова Кабінету Міністрів від 26.09.2007 р. № 1169. – Режим доступу: [http://search.ligazakon.ua/l\\_doc2.nsf/link1/KP071169.html](http://search.ligazakon.ua/l_doc2.nsf/link1/KP071169.html)