

DOI: <https://doi.org/10.32353/khrife.1.2019.037>
UDC340.65/.66:343.985–052

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IMPORTANCE OF TRIAL-MEDICAL MECHANISM FOR DEVELOPMENT OF BODIAL DAMAGES IN THE EXAMINATION OF DETENTIONED PERSONS

Detainees often complain about the unlawful use of force when special means and methods of detention were used, which they take as beatings and torture. Victims with such injuries commonly become the object of forensic medical examination of alive persons which is carried out during the trial and pre-trial investigation. There is a need to systematize and classify many types of mechanical and other types of injury: specific, typical or atypical for the well-known classical methods of hand-to-hand combat that law enforcement officers use.

The purpose of this work was to characterize injuries in victims received during their detention by law enforcement agencies and provide their morphological and clinical analysis in order to identify ways to improve the

effectiveness of these injuries' forensic assessment in the examination of alive persons.

Based on a retrospective morphological and clinical analysis of archival materials of the Kharkiv Regional Bureau of Forensic Medical Examination, the frequency and types of injuries, that were detected during the examination, of suspects injured in the course of their arrest by law enforcement agencies were determined. The features of forensic medical expert assessment in determining the mechanism, the severity of injuries associated with the detention of suspects by law enforcement agencies were defined. In the forensic medical expert practice, in the examination of alive persons when determining severity of injuries to suspects detained by law enforcement agencies, slight injuries and, in certain cases, injuries of moderate severity prevailed.

The localization and the mechanism of bodily injuries formation in detained victims, in some cases, allows to qualify such injuries as specific for detention by law enforcement agencies. A further prospect of this study is the identification and justification of clear diagnostic indications for the forensic assessment of bodily injuries received by suspects when detained by law enforcement agencies that arise from the action of blunt solid, sharp objects, gunshot wounds.

Keywords: forensic medical examination, bodily injuries, injuries to detainees, the severity of bodily injuries.

Formulation of Research Problem. In the current practice of forensic institutions of Ukraine, it is quite common that law enforcement agencies appoint forensic examinations to examine persons who have been detained by law enforcement officials and who have been subjected to violent acts.

In addition, detainees often complain about the misuse of force or the special means and methods of detention they consider to be beatings and torture. Case law also includes cases of unlawful, inadequate, and excessively high levels of use of physical force against suspected offenses.

Analysis of recent researches and publications. As is well known, the detention and use of force and special means against suspects and offenders in Ukraine is regulated by several legislative acts, including the Criminal Procedural Code of Ukraine¹, the Law of Ukraine: *On National Police* and the relevant resolutions of the Cabinet of Ministers of Ukraine. Article 45 of the Law of Ukraine: *On National Police* states that «... a police officer is authorized to use special means only if he or she has received special training, in addition, the use of force and special means must be proportionate and cause the least to the detriment of the addressee of this event and other persons.

Articles 42, 43, 44 of the same Law provide for a list of special means and procedure for the use of physical force. It is stated that «... a

¹ Kryminalnyi protsesualnyi kodeks Ukrainy [The Criminal Procedure Code of Ukraine]. URL : [https:// zakon.rada.gov.ua/laws/show/4651-17](https://zakon.rada.gov.ua/laws/show/4651-17); Pro natsionalnu politsiyu : Zakon Ukrainy URL : [https:// zakon.rada.gov.ua/laws/show/580-19](https://zakon.rada.gov.ua/laws/show/580-19) [in Ukrainian].

police officer is obliged to inform his supervisor in writing in case of personal injury to his detained person.« Thus, proceeding from the foregoing, the procedure for the appointment of forensics for the identification, assessment of severity and the establishment of the mechanism of injury is very logical and legally correct, with the aim of preserving important information, which in turn will facilitate further investigation and hearing the merits of the case in court.

During the forensic examination of the detained persons, specialists find and establish the presence and location of bodily injuries¹. They also can determine the mechanism and duration of injury. Quite often, it is possible to match personal injury with information that comes legally from legal institutions that have appointed this forensic examination and from the person certifying him/her. This information should be reflected in forensic expert conclusion². Based on the results of forensic examination, it is logical to systematize and classify many types of mechanical and other types of trauma – specific, typical or atypical for the well-known classic techniques of hand-to-hand combat, taught by law enforcement officers.

At the same time, it should be noted that the standard set of special means for ensuring public safety and order also leaves very characteristic bodily injuries on those parts of the body of a person to which they were applied according to the legislation of Ukraine. In view of this, it can be argued that a scientific forensic study of the use of legal and adequate physical force to obtain objective information on a case is a great incentive to improve the national law enforcement system. In addition, this research in the field of forensic science, in terms of practical importance, will greatly contribute to the development of humanism and protection of the rights of Ukrainian citizens.

The **Article Purpose** is to characterize and morpho-clinical analysis of bodily injuries in injured suspects obtained during their detention by law enforcement agencies to further identify ways to improve the effectiveness of forensic assessment of the said trauma in the examination of living persons.

Material and methods of research. The findings of the forensic examination of living persons based on injuries received during the detention of suspected law enforcement agencies, conducted directly with our participation based on the Kharkiv Regional Bureau of Forensic Expertise (KhRFME), during 2016-2018, were the material for the analysis.

¹ *Hohlov V. V.* Sudebnaja medicina: Rukovodstvo [Forensic Medicine: A Guide]. izd-e 3-e pererab. i dop. Smolensk, 2010. 992 s. [in Russian].

² *Tahaiev M. M.* Sudova medytsyna [Forensic medicine]. Navchalno-praktychnyi posibnyk. 2-he vyd., pererob. i dop. Kharkiv : Fakt, 2012. 1296 s. [in Russian].

Experts of the examination department of victims, accused and other persons of KhRFME for 2005-2015. In total, 58 conclusions of forensic examination were processed.

During research, the following methods were used: registration: data obtained were recorded in specially designed registration cards, which included an appropriate list of morpho-clinical features; method of mathematical and statistical analysis; morphological method – determine the nature of injuries; clinical: analyzed disorders of the function of injured organs, duration of health disorders; forensic: analyzed the severity of injuries established by experts.

Main content presentation. The performed analysis of the observations showed that the forensic medical examinations of the suspected victims with personal injuries received during the detention by law enforcement agencies make up on average 2% of the total expert studies of the expert examination department of the victims, accused and other persons of KhRFME. Most of our observations were made by male persons: 53 cases (4 % of observations), more than half of the victims were of working age 20-50 years. While clarification the mechanism of bodily injury in 15 cases (25, 9% of observations) suspected victims complained about the use of handcuffs by law enforcement agencies, in 35 cases (60, 3% of observations): use of unarmed extremities of law enforcement officers as a means of physical influence (striking, squeezing, squeezing twisting the hands of the suspect victim). In 8 cases (13.8% of observations), suspects indicated the absence of any physical influence on the part of law enforcement officials. In no case did the suspects complain about the use by police officers of sticks or firearms.

At the same time, a forensic examination was appointed by law enforcement authorities even in cases where the suspects were absent of any bodily harm. The purpose of such expertise in these cases was that the law enforcement agencies wanted to certify that the suspects had no physical injuries at the time of detention, and thus that there was no physical impact on the part of law enforcement officials.

When ordering a forensic examination, law enforcement authorities often raised the issue of the presence of bodily injuries, suspicion, character, localization, mechanism of formation and severity of the suspects. The question was also raised about the possibility of causing bodily harm, discovered in the suspect victim by his own hand, in the struggle, self-defense falling from the «height of his own height.»

The nature of the bodily injuries found in the suspected victims was as follows. In most of the suspected suspects, experts have found that the lesions of soft tissues of the skin – bruises, bruises, wounds of different limitation, have been established. However, in 5 cases (8, 6% of observations) in the suspected affected experts were found clogged wounds, which were located on the legs (mainly in the shins) and in 1 case (1, 7% of observations) – on the scalp.

In most of the suspected victims – 24 cases (41, 4% of observations) injuries were located mainly on the hands, wrists and forearms of the hands. At the same time, the location of such bodily injuries on the back surface of the hands and forearms of the hands may indicate self-defense, including during the detention of the suspected victim. In 22 cases (37, 9% of observations) injuries were found on the head and neck, in 16 cases (27, 6% of observations) – on the chest, in 13 cases (22, 4% of observations) on the legs. Thus, the character and localization of these bodily injuries, did not exclude the possibility of their formation at the action of the hands or feet of an unarmed person, or special means, namely, cues. In one observation, a suspected victim had a complex of injuries in the form of a fracture of the pterygoid process of the left radial bone, marginal fracture of the coronal process of the ulnar bone, a large hematoma in the left forearm, traumas of the laryngeal gastric lengthening, phonastenia (weakened vocal closure). At the same time, it was the nature and localization of the above bodily injuries that indicated that they could be obtained by a specific mechanism, as indicated by the injured suspect. During his testimony, he noted that law enforcement officers choked him, clasped his hands, tried to bring them back. The suspect stressed that one law enforcement officer was behind him and the forearm of his left hand was squeezing his neck. Other law enforcement officials grabbed the suspect's hands and twisted them back. It should be emphasized that saddles and bruises on suspects' hands and wrists were established in 11 cases (18.9% of observations) out of 15 cases where suspected victims indicated the use of special handcuffs. Such bodily injuries, in our opinion, can be considered as a characteristic feature in the application of these special means. However, it is noteworthy that their form, most often, was presented in the findings of forensic experts as *uncertain*. In our view, it is still necessary to clearly state the form of bodily injury when conducting such forensic examinations, which in this case may be either an elongated oval or rectangular. In forensic expert assessment of injuries, the conclusions indicate the severity of their injuries in the suspected victims.

In 1 case (7 % of observations), a suspected victim with a traumatic process of the left radial process, marginal laceration of the coronal process of the ulna, laryngeal injuries of moderate severity according to the criterion «Long-term disorder. 2.2.1 of the «Rules of Forensic Determination of the Severity of Personal Injury» (hereinafter «Rules...») (approved by the order of the Ministry of Health of Ukraine № 6 of 17.01.1995).¹ In 39 cases (67, 2% of observations) in the suspected

¹ Правyla sudovo-medychnoho vyznachennia stupenia tiazhkosti tilesnykh ushkodzhenn [Rules of forensic determination of severity of injuries]: zatv. nakazom MOZ Ukrainy №6 vid 17.01.1995 r. URL : <https://zakon.rada.gov.ua/laws/show/z0255-95> (data zvernennia 10.06.2019) [in Ukrainian].

victims of the presence of bodily injury of the soft tissues of the skin of different parts of the body, slight bodily injuries were established (paragraph 2.3.2. «b» of the *Rules*).

In 12 cases (23.5% of observations), the severity of injuries was not established by experts because no injuries were detected by the suspected experts. The reasons for the appointment in some cases of forensic commissions in our observations were: the doubts of the investigator, the lawyers, the accused persons in the correctness of the established degree of severity of bodily injuries during the initial examinations; contradictions of the forensic expert's findings regarding the established mechanism of injuries during the primary and subsequent examinations; appearance of additional medical data on the trauma course; the need to ascertain the consequences of the trauma; the absence of a forensic expert's opinion in the foregoing and subsequent examinations of the answers to all questions of the investigator.

Because of our work, we have developed an algorithm program for scientific research on the identification and substantiation of forensic diagnostic criteria for expert evaluation of the presence of specific, characteristic or uncharacteristic bodily injuries in suspected victims, received by them during detention of employees:

- analysis of the nature, localization, mechanism of formation of bodily injuries received by suspected victims during detention by law enforcement agencies, as well as establishing the frequency of occurrence of individual bodily injuries based on their own expert studies and analysis of archival forensic material;

- in case of severe injuries, to analyze their clinical course and results according to the «Rules ...» based on the study of clinical material. To determine the severity of these injuries based on the conducted analysis and revealed forensic diagnostic criteria;

- to compare the obtained data in the analysis of forensic archival material with clinical data by interpreting the obtained forensic data;

- substantiate forensic diagnostic criteria for the expert establishment of specific, characteristic or uncharacteristic bodily injuries in suspected victims, obtained during their detention by law enforcement officials.

Conclusions.

1. In the expert practice of the department of forensic medical examination of victims, accused and other persons of KhRFME traumas received by suspected victims during their detention by law enforcement agencies make 2 % of the total annual number of examinations;

2. Until recently, there are no clear forensic diagnostic criteria for establishing bodily injury during the examination of suspected persons (specific, characteristic or uncharacteristic) during their detention by law enforcement agencies.

This may lead to arbitrary interpretations of the mechanism, the means of causing such bodily harm to forensic experts in such cases, and

ultimately to the wrongful qualification of the offense committed by law enforcement officials.

3. In forensic expert practice, in the examination of suspected persons to determine the severity of bodily injuries detained by law enforcement officers, light bodily injuries and, in some cases, moderate severity, prevail.

4. Localization and mechanism of bodily injury formation in suspected victims according to our observations, in some cases allows to qualify them as characteristic of law enforcement agencies receiving during detention.

5. A further perspective of this study is to identify and substantiate clear diagnostic features for forensic evaluation of injuries sustained by suspected law enforcement officers, resulting from blunt, sharp objects and gunshot wounds. The results obtained will provide a basis for forensic specialists to increase the objectivity and probative value of expert opinions, and thus improve the quality of forensic diagnostics of such injuries in the examination of living persons.

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ВАЖЛИВІСТЬ СУДОВО-МЕДИЧНОГО ВСТАНОВЛЕННЯ МЕХАНІЗМУ УТВОРЕННЯ ТІЛЕСНИХ УШКОДЖЕНЬ ПРИ ЕКСПЕРТИЗИ ЗАТРИМАНИХ ОСІБ

Затримані особи нерідко скаржаться на неправомірне застосування до них сили або спеціальних засобів і методів затримання, які вони сприймають за побої та тортури. Постраждалі з такими ушкодженнями стають об'єктом судово-медичної експертизи живих осіб, яка проводиться в ході судового та досудового слідства. Виникає необхідність у систематизації та класифікації багатьох різновидів механічної та інших видів травми – специфічної, типової або нетипової для відомих класичних

прийомів рукопашного бою, яким навчаються співробітники правоохоронних органів.

Метою даної роботи є характеристика та морфо-клінічний аналіз тілесних ушкоджень у потерпілих, отриманих під час їх затримання правоохоронними органами для подальшого виявлення шляхів підвищення ефективності судово-медичної оцінки вказаної травми при експертизі живих осіб.

На підставі ретроспективного морфо-клінічного аналізу архівних матеріалів Харківського обласного бюро судово-медичної експертизи визначено частоту та види травм при експертизі живих осіб у постраждалих, які травмовані при затриманні правоохоронними органами. Встановлено особливості судово-медичної експертної оцінки при визначенні механізму ступеня тяжкості тілесних ушкоджень, пов'язаних із затриманням правоохоронними органами підозрюваних. У судово-медичній експертній практиці при експертизі живих осіб із визначення ступеня тяжкості тілесних ушкоджень у постраждалих підозрюваних, затриманих правоохоронними органами, превалюють легкі тілесні ушкодження та в окремих випадках ушкодження середнього ступеня тяжкості.

Локалізація та механізм утворення тілесних ушкоджень у затриманих постраждалих, за нашими спостереженнями, в окремих випадках дозволяє кваліфікувати їх як характерні для отримання під час затримання правоохоронними органами. Подальшою перспективою даного дослідження є виявлення та обґрунтування чітких діагностичних ознак для судово-медичної оцінки тілесних ушкоджень, отриманих постраждалими при затриманні їх правоохоронними органами і які виникають від дії тупих твердих, гострих предметів, а також вогнепальних поранень.

Ключові слова: судово-медична експертиза, тілесні ушкодження, травми у затриманих осіб, ступінь тяжкості тілесних ушкоджень.

Received by the Editorial Board: 12.06.2019