

Initial Stage of Deliberate Murder Investigation Motivated by Racial, National or Religious Intolerance

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The Article Purpose is to specify peculiarities of the initial investigation stage of deliberate murder motivated by racial, national or religious intolerance. To fulfil this goal, the author uses general scientific and special research methods: analysis, synthesis; formal-logical; logical-legal; legal analysis. The author studies into peculiarities of the initial investigation stage of deliberate murder driven by racial, national or religious intolerance. Emphasis is made on the importance of identifying typical investigative situations at the initial investigation stage, where specific investigative (detective) actions are taken to collect information, identify signs of a crime and develop investigative leads. At this investigation stage, forensic experts solve specific tasks, assess investigative situation, identify sources of information, determine investigation direction, plan interaction with operational agencies, and collect information about crime circumstances, the victim, and the suspect. The author notes the difficulty of determining the motive of intolerance at the initial stage and the possibility of changing criminal law qualification in the course of pre-trial investigation. The paper highlights the necessity for thorough investigation at the initial stage, especially during the development of forensic methodology, to distinguish murders based on intolerance from other types of murders. It has been established that urgent investigative (search) actions at this stage are: inspecting

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crime scene, interrogating witnesses, and appointing and conducting forensic examinations. Classification of investigative situations based on the sources of initiation of pre-trial investigation and information components serves as the basis for efficient investigation planning.

Keywords: *pre-trial investigation initial stage; deliberate murder; intolerance motive (racial, national, religious); investigative situation.*

Research Problem Formulation

The initial stage of investigating deliberate murder with motives of racial, national, or religious intolerance has a particular nature. The investigation process for this category of crimes cannot be effectively conducted without outlining the necessary investigative (search) actions and subsequent steps of the investigator. This process is crucial as it contributes to obtaining information about criminal actions, developing a specific investigative lead, and identifying suspects.

Successful resolution of tasks at the initial investigation stage can significantly enhance the efficiency of the entire investigation process and help reveal the truth about a committed crime.

These activities should be carried out under the requirements of current Criminal Procedure Law and scientific guidelines.

Article Purpose

To outline peculiarities of the initial investigation stage in cases of deliberate murder motivated by racial, national, or religious intolerance.

Research Methods

To achieve the set goal, general scientific and special research methods have been employed: analysis, synthesis; formal-logical; logical-legal; legal analysis.

Analysis of Essential Researches and Publications

Peculiarities of the initial investigation stage (particularly, deliberate murder with motives of racial, national, or religious intolerance) have been studied by both domestic (A. Borovyk ¹, A. Volobuiev ² with co-authors, O. Harasymiv ³ with

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- 1 Боровик А. М. Особливості криміналістичної характеристики злочинів, вчинених з мотивів расової, національної чи релігійної нетерпимості, і предмету доказування у досудовому розслідуванні : дис. ... канд. юрид. наук. Маріуполь, 2021. 246 с.
 - 2 Волобуєв А. Ф., Одерій О. В., Степанюк Р. Л. та ін. Криміналістика : підручник. У 2 т. Т. 2 / за заг. ред. А. Ф. Волобуєва, Р. Л. Степанюка, В. О. Маляррової ; МВС України, ХНУВС. Харків, 2018. 312 с. URL: <https://dspace.univd.edu.ua/items/7391f531-f696-442a-b108-7ce06abbe7ad> (date accessed: 20.12.2023).
 - 3 Гарасимів О. І., Дуфенюк О. М., Захарова О. В. та ін. Методика розслідування окремих видів злочинів : навч. посіб. / за заг. ред. Є. В. Пряхіна. 2-ге вид., перероб. та допов. Львів, 2019. 312 с. URL: <https://dspace.lvduvs.edu.ua/handle/1234567890/2746> (date accessed: 20.12.2023).

co-authors, I. Kohutych ⁴, T. Pazynych ⁵, V. Tishchenko ⁶, V. Shevchuk ⁷, and others), and foreign researchers (C. Roberts and co-authors ⁸, M. Hagerlid and G. Granström ⁹, M. Juutinen ¹⁰). Nevertheless, despite the existing theoretical and practical developments in this area, multidisciplinary research on the peculiarities of the initial investigation stage of deliberate murder motivated by racial, national, or religious intolerance requires subsequent research.

Main Content Presentation

The initial investigation stage into deliberate murder committed on grounds of racial, national, or religious intolerance is of particular importance. In order to ensure full collection of information about committed crimes, it is vital to conduct appropriate investigative actions at the initial investigation stage, which will contribute to establishing features of a crime, collecting initial evidence from the crime scene to identify suspects, and developing and

verifying specific investigative leads. The initial investigation stage determines the general direction of investigation, aims at developing evidentiary basis, which allows establishing the suspect's guilt in committing a murder. Therefore, efficiency of investigating this crime category depends on the completeness and quality of the initial criminal procedural activities conducted by law enforcement agencies.

Thus, V. Shevchuk emphasizes that the *crime investigation stage* term defines a specific period (phase) within the overall process of investigating a crime. This stage reflects the status of the investigation and aims to address specific tasks related to establishing the subject of proof and making procedural decisions in a crime. These decisions are influenced by investigation circumstances and peculiarities of conducting investigative, operational (search), and other actions, tactical-forensic complexes, including tactical operations ¹¹.

Currently, we observe a trend towards reducing the number of stages in criminal

- 4 Когутич І. І. Типові ситуації початкового етапу розслідування вбивств та обумовлені ними алгоритми дій слідчого. *Вісник Чернівецького факультету Національного університету «Одеська юридична академія»*. 2013. Вип. 1. С. 233–247. URL: http://nbuv.gov.ua/UJRN/vchfo_2013_1_25 (date accessed: 20.12.2023).
- 5 Пазинич Т. А. Особливості розслідування вбивств з мотивів расової, національної чи релігійної нетерпимості. *Актуальні проблеми вітчизняної юриспруденції*. 2016. № 5. С. 121–124. URL: <https://dspace.univd.edu.ua/items/84e23b5a-ac49-40bb-998e-064872aaf48a> (date accessed: 20.12.2023).
- 6 Тищенко В. В. Теоретичні і практичні основи методики розслідування злочинів : монографія. Одеса, 2007. 260 с.
- 7 Шевчук В. М. Тактичні операції у криміналістиці: теоретичні засади формування та практика реалізації : монографія. Харків, 2013. 440 с.
- 8 Roberts C., Innes M., Williams M., Tregidga J., Gadd D. Understanding who commits hate crime and why they do it. Welsh Government Social Research, 2013. 73 p. URL: <https://orca.cardiff.ac.uk/id/eprint/58880/1/understanding-who-commits-hate-crime-and-why-they-do-it-en.pdf> (date accessed: 20.12.2023).
- 9 Hagerlid M., Granström G. Hate Crime Investigation and Sentencing in Sweden: What Have We Learned in the Past 20 Years? *European Journal on Criminal Policy and Research*. 2023. 18 p. DOI: [10.1007/s10610-023-09563-9](https://doi.org/10.1007/s10610-023-09563-9) (date accessed: 20.12.2023).
- 10 Juutinen M. Hate crimes and their handling in the criminal process. Ministry of Justice, Finland, Helsinki, 2021. 119 p. URL: <https://julkaisut.valtioneuvosto.fi/handle/10024/163385> (date accessed: 20.12.2023).
- 11 Шевчук В. М. *Op. cit.*

investigation methodology. A. Milevska notes that earlier most researchers preferred to distinguish three stages of pre-trial investigation (initial, subsequent, and final) with certain variations in their names. At present, in connection with the updating of the Criminal Procedure Law of Ukraine, the emphasis is made on two stages of this stage¹².

M. Juutinen points out that a criminal proceeding begins with crime notification, which is recorded by the police. The police consider notifications of crimes in two stages, the first of which is preliminary investigation of offenses. The actual pre-trial investigation constitutes the second stage. During preliminary investigation, the police establish grounds for suspicion of committing an offense, and if such grounds exist, they initiate pre-trial investigation¹³.

As set out in Part 1 of Article 214 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine), “investigator, inquiring officer or public prosecutor shall immediately but in any case no later than within 24 hours after submission of a report, notification on a criminal offence that has been committed or after he has learned on his own from any source about circumstances which are likely to indicate that a criminal offence has been committed, to enter the information concerned in the Unified Register of Pre-Trial Investigations, and to initiate in-

vestigation”¹⁴. In urgent situations, it is permissible to conduct scene inspection before entering information into the Unified Register of Pre-trial Investigations (hereinafter referred to as *the URPI*); in such cases, the information is entered promptly after inspection completion¹⁵.

In addition to scene inspection, the Law of Ukraine *On the National Police* envisages the following preventive measures:

- “1) document check of the person;
- 2) questioning of the person;
- 3) frisk and inspection;
- 4) stopping a vehicle;
- 5) requiring to leave the place and restricting access to the specific territory;
- 6) restricting of movement of the person or the vehicle or actual ownership of a thing;
- 7) entering the home or other property of the person;
- 8) verification of compliance with requirements of the permit system of bodies of internal affairs;
- 9) use of technical equipment and technical means which have functions of photo and filming, video recording, photographic, filming and video equipment;
- 10) control of compliance with restrictions established by law in respect of persons who are under administrative supervision, and other categories of persons;
- 11) police custody” (Part 1 Art. 31)¹⁶.

The initial stage of investigating any criminal offense includes a set of

12 Мілевська А. О. Слідчі ситуації на початковому етапі розслідування кримінальних правопорушень, пов'язаних з підробленням нотаріальних документів. *Міжнародний юридичний вісник: збірник наукових праць Національного університету державної податкової служби України*. 2016. Вип. 2 (4). С. 30—37. URL: <https://docplayer.net/72551064-Mizhnarodniy-yuridichniy-visnik-zbirnik-naukovih-prac-nacionalnogo-universitetu-derzhavnoyi-podatkovoyi-sluzhbi-ukrayini.html> (date accessed: 20.12.2023).

13 Juutinen M. Op. cit. URL: <https://julkaisut.valtioneuvosto.fi/handle/10024/163385> (date accessed: 20.12.2023).

14 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.12.2023).

15 Ibid.

16 Про Національну поліцію : Закон України від 02.07.2015 р. № 580-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text> (date accessed: 20.12.2023).

organizational measures (planning the start of investigation, developing leads, etc.), urgent investigative (search) actions, and operational (search) actions.

For example, V. Maliarova, defining the content and limits of the stages of crime investigation, notes that the initial stage begins with the registration of information about the event in the URPI and ends with the issuance of a written notification of suspicion taking place when there is sufficient evidence (clause 3 of Part 1 of Article 276 of the Criminal Procedure Code of Ukraine)¹⁷. I. Kohutych differentiates between three stages in the process of investigating crimes (including murders):

- 1) *the initial stage*, which includes the period of conducting investigative (search) actions, the time aspect of which is characterized by urgency. According to the author, it starts simultaneously with the pre-trial investigation, as specified in Part 1 of Article 214 of the Criminal Procedure Code of Ukraine, and ends with fulfilment of tasks associated with this stage;
- 2) *the next (subsequent) stage* encompasses the period of conducting remaining investigative (search) actions aimed at systematically and thoroughly collecting and examining evidence in a proceeding;
- 3) *the final stage* begins from the moment the investigator (prosecutor) decides to complete the investigation and continues until an authorized person adopts one of the procedural decisions stipulated in Article 283 of the Criminal Procedure Code of Ukraine¹⁸.

So, there are various approaches to staging the process of investigating crimes, which significantly affect determination of boundaries for these stages.

We find the viewpoint regarding determination of the initial stage boundaries quite controversial, particularly the identification of its beginning with the start of pre-trial investigation, which (as envisaged in clause 5 of Part 1 of Article 3 of the Criminal Procedure Code of Ukraine) is a stage of a criminal proceeding that begins from the moment information about a criminal offense is entered into the Unified Register of Pre-Trial Investigations¹⁹. Since investigative (search) actions can be carried out before information about a crime is entered into the Unified Register of Pre-trial Investigations, the initial stage of pre-trial investigation begins earlier. For example, in the case of a murder, after which a crime scene investigation team is dispatched to the scene of the murder where it conducts informational and investigative activities, i.e., examines the crime scene and the body, and identifies, collects physical evidence.

According to V. Tishchenko, the tasks of the initial stage of investigating crimes include:

- without a delay identifying and documenting evidence of the investigated crime at the scene;
- taking measures to prevent the loss of evidentiary information contained in traces, documents, and other objects, and its timely detection and documentation;
- clarifying and assessing the investigative situation developed after the criminal case is initiated;

17 Малярова В. О. Етапізація процесу розслідування злочинів проти моральності у сфері статевих стосунків. *Право і Безпека*. 2013. № 3 (50). С. 86–91. URL: http://nbuv.gov.ua/UJRN/Pib_2013_3_19 (date accessed: 20.12.2023).

18 Когутич І. І. *Оп. cit.* URL: http://nbuv.gov.ua/UJRN/vchfo_2013_1_25 (date accessed: 20.12.2023).

19 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.12.2023).

- determining sources of information about the investigated crime;
 - developing an investigation plan;
 - selecting forms and methods of interaction with agencies and services involved in operational (search) activities;
 - searching for and gaining information about the mechanism and circumstances of a committed crime;
 - collecting and studying information about the victim;
 - searching for, obtaining, and analyzing information about persons who have committed a crime, as well as searching for and apprehending them ²⁰.
- services engaged in operational activities;
 - searching for and obtaining information about the mechanism and circumstances of the committed crime;
 - collecting and analyzing information about the victim;
 - searching for, collecting and analyzing information about the perpetrators of the crime, as well as searching for and arresting them ²¹.

The initial stage of qualifying a socially dangerous act containing features of a criminal offense is entering information about the commission of a criminal offense into the URPI. Thus, according to clause 5 of Part 5 of Article 214 of the Criminal Procedure Code of Ukraine, the following information shall be entered in the Unified Register of Pre-Trial Investigations: provisional legal qualification of the criminal offence with indication of Article (part of the Article) of the Ukrainian law on criminal liability ²². This provision is duplicated in paragraph 6 of clause 1 of Chapter 1 of Section II of the Provisions on the Unified Register of Pre-trial Investigations, its Formation and Maintenance ²³.

M. Hagerlid and G. Granström point out that challenges related to collecting evidence confirming the presence of intolerance motives arise during the investigation stage. Thorough documentation of a crime at the initial investigation stage is

In turn, H. Moskalenko emphasizes that the tasks of the initial investigation stage are:

- clarification and assessment of the investigative situation that has occurred after the start of criminal investigation (further leads are developed, tactical tasks are determined, and means for their verification and resolution are selected);
- identifying sources of information about the crime being investigated;
- determining the direction of the investigation and developing an investigation plan;
- selecting forms and methods of interaction with agencies and

20 Тіщенко В. В. *Op. cit.*

21 Москаленко Г. В. Поняття та особливості етапів розслідування злочинів. *Актуальні проблеми держави і права*. 2009. Вип. 49. С. 376—380. URL: <http://www.apdp.in.ua/v49/64.pdf> (date accessed: 20.12.2023).

22 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.12.2023).

23 Положення про Єдиний реєстр досудових розслідувань, порядок його формування та ведення : затв. наказом Генпрокурора від 17.08.2023 р. № 231. URL: <https://zakon.rada.gov.ua/laws/show/v0298905-20#Text> (date accessed: 20.12.2023).

crucial for further investigation and trial. Additionally, measures should be taken to document the existence of intolerance motives: photographing symbols of intolerance, verifying inconsistencies in the perpetrator's statements; investigating signs of repeat offenses; and checking the perpetrator's membership in organizations associated with intolerance ²⁴.

O. Harasymiv and his co-authors note that it is not always possible to qualify the suspect's actions during investigation of violent crimes based on intolerance motives at the beginning of pre-trial investigation. Such qualification becomes possible only from the moment when the suspect is identified as the perpetrator of the crime, i.e., from the moment of suspicion announcement, because the motive is an element of the subjective side of a crime, and its proof is practically impossible without the participation of the suspect or the accused. What is more, the information entered into the URPI should contain details about the initial criminal legal qualification. Therefore, in the investigation of crimes committed for intolerance motives, the primary criminal-legal qualification always includes the qualification as a crime against life and health, without specifying any qualifying signs or other qualifying features that are evident at the time of entering the information into the URPI ²⁵.

It is worth mentioning that at the initial stage of investigating deliberate murder based on racial, national, or religious intolerance motives, it is quite challenging to prove the fact of deliberate murder spe-

cifically motivated by racial, national, or religious intolerance. Events under such conditions can be classified as murder (Part 1 of Article 115 of the Criminal Code of Ukraine ²⁶, hereinafter referred to as *the CC of Ukraine*) or as a murder based on hooligan motives (clause 7 of Part 2 of Article 115 of the CC of Ukraine ²⁷). After registering a criminal proceeding and conducting overt and covert investigative (search) actions aimed at clarifying case circumstances, and in the availability of sufficient evidence confirming commission of deliberate murder specifically motivated by racial, national or religious intolerance, investigators change the legal qualification of the criminal offense from Part 1 of Article 115 of the Criminal Code of Ukraine or clause 7 of Part 2 of Article 115 of the Criminal Code of Ukraine to clause 14 of Part 2 of Article 115 of the Criminal Code of Ukraine ²⁸.

The decision to amend initial legal qualification is typically taken prior to formally informing a person of suspicion, and is accompanied by an appropriate resolution. If new factual details pertaining to a criminal offense come to light during the pre-trial investigation or trial involving the accused, there exists the possibility of adjusting the offense's qualification. This may involve creating a new suspicion or modifying a previously issued one. The change in the notice of suspicion may be expressed in a change in the qualification formula or only in a change in the scope of charge without changing the qualification formula. Where notice of suspicion was given by the public prosecutor, only the public prosecutor shall have the right to

24 Hagerlid M., Granström G. Op. cit. DOI: [10.1007/s10610-023-09563-9](https://doi.org/10.1007/s10610-023-09563-9) (date accessed: 20.12.2023).

25 Гарасимів О. І., Дуфенюк О. М., Захарова О. В. та ін. Op. cit. URL: <https://dspace.lvduvs.edu.ua/handle/1234567890/2746> (date accessed: 20.12.2023).

26 Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 20.12.2023).

27 Ibid.

28 Ibid.

notify of the new suspicion or to change previously notified suspicion²⁹).

For instance, in criminal case No. 12020050790001071, the legal qualification of the criminal offense was changed from Part 2 of Article 15, clause 7 of Article 115 of the Criminal Code of Ukraine to Part 2 of Article 15, clause 14 of Article 115 of the CC of Ukraine based on the fact of attempted deliberate murder motivated by religious intolerance. After collecting enough evidence to suspect a person of committing the crime, a suspicion notice for committing the criminal offense under Part 2 of Article 15, clause 14 of Article 115 of the Criminal Code of Ukraine was drawn up³⁰.

From O. Pchelina's perspective, the main tactical tasks of the initial investigation stage are:

“• establishing location, time, and circumstances of a crime;

- identifying, documenting, and collecting evidence of a crime and other physical evidence;
- identifying, searching for, and apprehending the suspect;
- assessing the extent of damage and searching for stolen or seized property to ensure compensation for losses incurred;
- gathering sufficient evidence to bring charges against a person;

• identification of possible witnesses, etc.”³¹.

C. Roberts and co-authors focus on certain patterns leading to incidents motivated by intolerance. As an example, they note that in areas with high societal tension, incidents may occur in “chains” or sequentially, as the processes of action and reaction are linked to specific events in time³².

The circumstances requiring clarification during the investigation of deliberate murder motivated by racial, national, or religious intolerance unquestionably demand thorough examination when forming a distinct forensic methodology. This is stipulated in the provisions of Part 2 of Article 9 of the CPC of Ukraine: “Public prosecutor, chief officer of pre-trial investigation agency, investigator shall be required to examine the circumstances of criminal proceedings comprehensively, fully and impartially; find circumstances both of incriminating and exculpatory nature in respect of the suspect, the accused, as well as the circumstances mitigating and aggravating their punishment; provide due legal evaluation thereof and ensure the adoption of lawful and impartial procedural decisions³³.”

Particularly, it is important to pay attention to the circumstances that make it possible to distinguish deliberate murder motivated by racial, national, or religious

29 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.12.2023).

30 Ухвала Красногвардійського райсуду м. Дніпропетровська від 24.10.2022 р. Справа № 227/1045/22. Провадж. № 1-кв/204/1930/22. URL: <https://revestr.court.gov.ua/Review/106910601> (date accessed: 20.12.2023).

31 Пчеліна О. В. Тактичні завдання розслідування злочинів і криміналістична методика. *Криміналістичний вісник*. 2012. № 2 (18). С. 48–52. URL: <https://dspace.univd.edu.ua/items/144f347d-933a-4fbf-ad60-77f1e7603198> (date accessed: 20.12.2023).

32 Roberts C., Innes M., Williams M., Tregidga J., Gadd D. Op. cit. URL: <https://orca.cardiff.ac.uk/id/eprint/58880/1/understanding-who-commits-hate-crime-and-why-they-do-it-en.pdf> (date accessed: 20.12.2023).

33 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.12.2023).

intolerance from other types of murders at the initial investigation stage. These circumstances include:

- a victim's belonging to a specific race, nationality, or religion or a perpetrator's acceptance of such belonging;
- existence of reasons indicating the perpetrator's desire to prove the victim's inferiority due to belonging to a certain race, nationality or religion, demonstrating prejudice and hatred towards a certain social group.

T. Pazynych has identified the following urgent investigative (search) actions at the initial stage of investigating murders with signs of racial, national, or religious intolerance motive:

- inspection of the scene to identify features indicating a xenophobic motive for the crime (such as the presence of specific items, attributes, inscriptions, symbols, etc.);
- interrogation of witnesses and eyewitnesses about circumstances preceding a crime, circumstances of the attack itself, and events afterward;
- submission of a request to the criminal investigation unit for information regarding the whereabouts of an individual registered in connection with the case;
- submission of a request to the criminal investigation team to look into youth groups with the aim of locating suspects and monitoring pertinent internet resources in order to gather potential information about the conducted action;

- conduct of personal searches and presenting apprehended suspects for identification;
- arrangement and appointment of forensic medical examinations of the corpse and other examinations depending on seized objects (trace evidence, dactyloscopic, ballistic, forensic, cold weapons, forensic medical, molecular-biological [DNA analysis], etc.)³⁴.

Stemming from the above, at the initial stage of investigating deliberate murder motivated by racial, national, or religious intolerance, the following investigation program can be developed:

- analyze the initial information and typify investigative situations considering information about the perpetrator and the victim;
- develop investigative leads about a committed crime (regarding a crime, method of commission, etc.);
- identify primary and secondary investigation tasks.

To address the tasks at the initial stage of investigating deliberate murder motivated by racial, national, or religious intolerance, the investigator should: inspect a crime scene; record information in the URPI; interrogate the applicant and witnesses; appoint forensic examinations. After entering the information into the URPI, it is advisable to conduct these investigative (search) actions:

- interrogate eyewitnesses of a murder in order to gather their testimonies as witnesses to a crime;
- interrogate individuals who possess information about the perpetrator and the victim (origin, distinctive marks, etc.);
- appoint forensic examinations.

34 Пазинич Т. А. Оп. cit. URL: <https://dspace.univd.edu.ua/items/84e23b5a-ac49-40bb-998e-064872aaf48a> (date accessed: 20.12.2023).

In Ye. Khyzhniak's view, the investigative situation, much like the forensic profile, is a vital tool for investigators, allowing them to maximize the efficiency of crime investigations. Knowledge of typical investigative situations helps identify priority tasks and avoid waste of time and effort. By comparing a typical investigative situation with that encountered during the investigation of a specific crime and considering the relationships between components of the forensic profile for this group of crimes, investigators can develop an investigation plan and effectively solve the task of establishing the perpetrator's identity³⁵.

Other scientists are convinced that the investigative situation is a category of forensic tactics. For example, V. Veselskyi asserts that the investigative situation belongs to the realm of concepts of forensic tactics and, like other tactical-forensic terms, is implemented in forensic methodology. He justifies this conclusion by stating that the investigative situation specifically defines the tactics of certain investigative actions³⁶.

In our opinion, the investigative situation can be viewed as both a forensic tactic and a forensic methodology. However, forensic methodology takes precedence because the investigative situation arises at the beginning of the preliminary investigation and investigative actions serve as a means of investigating a crime.

V. Piaskovskyi has found out that typification of investigative situations at

the initial stage of crime investigations may stem from various criteria, namely: the volume and content of data for entry into the URPI; the nature of the typical "trace pattern"; methods for crime commission (situations of preparation, immediate commission, concealment, and use of criminal activity outcomes)³⁷.

It is worth pointing out that the classification of typical investigative situations at the initial stage of investigating deliberate murder motivated by racial, national or religious intolerance may include such characteristics as: the amount of evidence obtained, the presence of suspects, the presence or absence of forensically significant information during the investigation process, etc.

Specifically, A. Volobuiev, along with co-authors, notes that typical investigative situations at the initial investigation stage are of particular importance for developing specific practical guidelines for each individual investigation methodology. He views the investigative situation in criminalistics as the conditions of investigating a criminal offense at a certain point in time. Scholars highlight the following investigation factors:

- informational (in particular, data about a crime: evidence, operational search information);
- procedural (for example, the presence of a suspect at a certain point in an investigation);
- tactical (for example, the position taken by the suspect during interrogation);

35 Хижняк Є. С. Типові слідчі ситуації при розслідуванні статевих злочинів щодо малолітніх. *Південноукраїнський правничий часопис*. 2012. № 4. С. 197–199. URL: http://nbuv.gov.ua/UJRN/Pupch_2012_4_68 (date accessed: 20.12.2023).

36 Весельський В. К. Слідча ситуація як категорія криміналістичної тактики. *Боротьба з організованою злочинністю і корупцією (теорія і практика)*. 2011. Вип. 25–26. С. 193–199. URL: http://nbuv.gov.ua/UJRN/boz_2011_25-26_22 (date accessed: 20.12.2023).

37 Пясковський В. В. Методика розслідування торгівлі людьми : дис. ... канд. юрид. наук. Київ, 2004. 225 с.

- psychological (peculiarities of the psychology of persons participating in an investigation);
- material, technical and organizational (availability of necessary resources and possibilities for their use)³⁸.

Researchers acknowledge that they approach the investigative situation concept broadly. However, while developing specific investigation methodologies, they have found it challenging to typify certain factors (such as psychological, material-technical, and organizational). Consequently, in forensic methodology, the *investigative situation* term is used narrowly, referring to a compilation of crime-related information that dictates investigative tasks and corresponding methods for their resolution, encompassing both overt and covert investigative actions. Typical investigative situations emerge within specific investigation methodologies during the initiation of a criminal proceeding, contingent upon the nature of the initial crime-related information³⁹.

T. Volikov defines a typical investigative situation as *“a set of conditions at a specific moment in the investigation of a criminal offense that influences the selection of actions by authorized individuals for the optimal resolution of tasks in a criminal proceeding”*⁴⁰.

In proceedings involving deliberate murder motivated by racial, national, or religious intolerance, it is essential to clarify the following circumstances:

- the place, time, and environment, including events that preceded and

could have provoked the attack on a person;

- the method of committing a murder, means and instruments of a crime, the number of accomplices, and their roles;
- the existence of statements or actions (gestures, looks, etc.) of a xenophobic nature from the suspect before, during, or after the attack;
- information about the suspect's identity that could mitigate or aggravate a punishment;
- data about the victim, including their belonging to a specific racial, national, or religious group;
- detailed circumstances of the victim's presence at the site of the attack;
- the victim's actions before and during the attack, and the presence or absence of conflict, provocation, or attempts to resist the perpetrators;
- types of violence inflicted on a victim, including physical injuries resulting in death⁴¹.

Given the above, let's note that typical investigative situations are a significant component of the methodology for investigating certain types of crimes, specifically deliberate murders motivated by racial, national, or religious intolerance. For example, K. Nazarenko emphasizes the significance of analyzing and evaluating the investigative situation, as it enables an understanding of the wide range of

38 Волобуєв А. Ф., Одерій О. В., Степанюк Р. Л. та ін. *Op. cit.* URL: <https://dspace.univd.edu.ua/items/7391f531-f696-442a-b108-7ce06abbe7ad> (date accessed: 20.12.2023).

39 Ibid.

40 Воликов Т. Наукові диспути стосовно типових слідчих ситуацій при розслідуванні кримінальних правопорушень проти власності, вчинених в умовах воєнного стану. *Актуальні питання у сучасній науці*. 2023. № 7 (13). С. 250—260. DOI: 10.52058/2786-6300-2023-7(13)-250-260 (date accessed: 20.12.2023).

41 Пазинич Т. А. *Op. cit.* URL: <https://dspace.univd.edu.ua/items/84e23b5a-ac49-40bb-998e-064872aaf48a> (date accessed: 20.12.2023).

facts and phenomena associated with the perpetrator at this stage of an investigation. Additionally, the scholar notes that this process contributes to the understanding of scientific knowledge in forensic science, particularly concerning typical physical evidence (traces). This approach enables the study of methods and practices for locating sources, extracting information from them, documenting it, and preserving it. The researcher emphasizes that the investigative situation influences the formulation of leads regarding the whereabouts and traces containing information about the perpetrator. Consequently, this aids in selecting the most suitable tactical approaches, combinations, and recommendations for evidence collection. It should be noted that the analysis of the investigative situation helps the authorized person to select effective forensic techniques and methods for fulfilling the goal, as well as the most efficient forms of applying specific expertise and cooperating with investigative bodies in order to obtain forensically significant information about the perpetrator⁴². Thus, the analysis of specific typical investigative situations aids in the resolution of all the mentioned tasks.

Depending on the level of conflict, investigative situations are divided into conflictual (when the subject withholds information); non-conflictual (when the subject reports known information without withholding or distorting anything), and weakly conflictual (when the subject has important information to convey but, due to certain subjective or objective factors, perceives and reproduces it with misrepresentation)⁴³. Let's point out

that during the investigation of criminal proceedings involving deliberate murder motivated by racial, national, or religious intolerance, conflictual investigative situations may take place (especially during procedural actions involving the suspect) along with non-conflictual investigative situations (during interrogation of individual witnesses).

Investigative situations at the initial stage of investigating deliberate murder motivated by racial, national, or religious intolerance can be classified based on the characteristics of the investigation progress, which encompass typical investigative situations according to the criteria listed below:

- source of information about the crime event;
- level of the suspect's awareness regarding the identification of features indicating his / her involvement in the murder;
- counteraction to murder investigation.

Stemming from the analysis of criminal proceedings, it is important to emphasize that typical investigative situations at the initial stage should be classified depending on the source of information about the committed criminal offense. Such an approach impacts the volume of initial objective data and determines the moment of commencement of a criminal proceeding. Typical investigative situations at the initial investigation stage should be defined in accordance with the grounds for initiating pre-trial investigation set out in Article 214 of the Criminal Procedure Code of Ukraine. According to the materials of criminal proceedings related

42 Назаренко К. Ю. Розслідування злочинів, пов'язаних зі створенням або утриманням місць розпусти і звідництвом : дис. ... канд. юрид. наук. Дніпро, 2016. 218 с.

43 Вигівський І. М., Дрозд В. Г. Теоретичні та практичні основи формування методики досудового розслідування захоплення заручників : монографія. Київ, 2023. 368 с. URL: <https://dspace.oduvs.edu.ua/items/0acc7a5d-81af-4cd7-9c59-c1dab9f1c1a2> (date accessed: 20.12.2023).

to deliberate murders motivated by racial, national, or religious intolerance, pre-trial investigations are initiated upon the appeal of individual citizens, particularly when information is received from an eyewitness to a murder. In such investigative situations, after entering the information into the URPI to establish the circumstances of a criminal offense, the applicant is interrogated as a witness.

For instance, the verdict of the Zhytomyr Oblast Court of Appeals in criminal case No. 12017060170000543 states the statement on the committed offense ⁴⁴ that the wife reported that her husband had been stabbed by an unknown person and that she had also been physically assaulted in.

It is also important to consider the suspects' level of awareness about the discovery of their crime by relevant authorities when determining the direction for an investigation, especially with regard to whether investigative (search) actions are sudden in nature. For example, if: 1) the involvement of individuals in the discovered crime by law enforcement agencies is known, their actions are either completed or interrupted; 2) certain individuals are aware of crime discovery, but the criminal activity has not completely ceased; 3) persons involved in a crime are aware that law enforcement agencies are cognizant of their criminal activity, which has not ceased. From the perspective of countering the investigation at the initial stage, the following types of similar situations can be distinguished: 1) lack of

resistance to investigation; 2) resistance to investigation ⁴⁵.

A. Borovyk distinguishes the following two typical investigative situations at the beginning of pre-trial investigations into crimes committed on grounds of racial, national, or religious intolerance:

- 1) *the first investigative situation* occurs when a suspect as well as information about his/her identity and specific circumstances of a crime at the time of opening a criminal proceeding have been identified. This situation is marked by the fact that the information about the crime entered into the URPI contains sufficient features of motive, and the crime is classified according to the article of the Criminal Code of Ukraine that directly envisages this qualifying feature. Consequently, the perpetrator committed the crime with a specific motive, reflecting a hostile and biased attitude towards the victim based on his/her race, nationality, or religion;
- 2) *the second investigative situation* arises when the suspect is not identified at the time a criminal case is opened and must be searched for and identified, while certain circumstances of the crime are already known. This investigative situation is characterized by the fact that information entered into the URPI does not contain sufficient features of motive. Therefore, the crime is qualified without specifying the article that defines this qualifying feature ⁴⁶.

44 Вирок Житомирського апеляційного суду від 20.11.2023 р. Справа № 278/1904/17. Провадж. № 11-кп/4805/408/23. URL: <https://reyestr.court.gov.ua/Review/115015816> (date accessed: 20.12.2023).

45 Тімченко І. С. Типові слідчі ситуації початкового етапу розслідування умисного випуску на ринок України небезпечної продукції. *Молодий вчений*. 2014. № 12 (15). С. 285–288. URL: [http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/molv_2014_12\(1\)_68.pdf](http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/molv_2014_12(1)_68.pdf) (date accessed: 20.12.2023).

46 Боровик А. М. Оп. cit.

Another investigative situation should be mentioned: a person suspected of committing deliberate murder motivated by racial, national, or religious intolerance has been identified, but is evading pre-trial investigation authorities in order to avoid criminal liability.

An example of such an investigative situation is the ruling of Krasnohvardiiskyi District Court of Dnipropetrovsk City in criminal case No. 12020050790001071, where during the pre-trial investigation it was established that the suspect avoided appearing at the investigator's summons (without a valid reason failed to appear more than twice), was placed on the international wanted list, and is currently on the territory of the Russian Federation, which is recognized as an aggressor state (according to the appeal of the Verkhovna Rada of Ukraine No. 129-VIII dated 27.01.2015⁴⁷). The search for the suspect continues; he has not received permits to cross the contact line within the Donetsk region and has not crossed the state border of Ukraine. The court ruled that there is reasonable suspicion of this person committing criminal offenses, as he / she intentionally evades investigation and court on the territory of a state recognized by the Verkhovna Rada of Ukraine as an aggressor state, in order to avoid criminal liability, as specified in Part 2 of Article 15 and Part 1, clause 14 of Part 2 of Article 115 of the Criminal Code of Ukraine⁴⁸. Consequently, he / she has been declared internationally wanted, thus providing all legally defined grounds

for initiating special pre-trial investigation regarding this suspect⁴⁹.

Let's note: it is necessary to possess exhaustive information about a murder and its participants in order to typify investigative situations. Thus, during investigation of deliberate murder motivated by racial, national, or religious intolerance, based on information about the victim and the perpetrator of the murder (i.e., the informational component), the following typical investigative situations at the beginning of a pre-trial investigation can be singled out:

- identities of both the victim and the perpetrator are known;
- the victim is known, but the perpetrator is unknown;
- the victim is unknown, but the perpetrator is known;
- both the victim and the perpetrator are unknown, and the motive, time, place, and other circumstances of a murder are unknown;
- both the victim and the perpetrator are known, but the perpetrator is evading pre-trial investigation authorities in order to avoid criminal liability.

Conclusions

We have thoroughly analyzed approaches to defining the concept of the initial investigation stage and investigative situation, noting the complexity of

47 Звернення до Організації Об'єднаних Націй, Європейського Парламенту, Парламентської Асамблеї Ради Європи, Парламентської Асамблеї НАТО, Парламентської Асамблеї ОБСЄ, Парламентської Асамблеї ГУАМ, національних парламентів держав світу про визнання Російської Федерації державою-агресором : затв. постановою ВР України від 27.01.2015 р. № 129-VIII. URL: <https://zakon.rada.gov.ua/laws/show/129-19#Text> (date accessed: 20.12.2023).

48 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 20.12.2023).

49 Ухвала Красногвардійського райсуду URL: <https://reyestr.court.gov.ua/Review/106910601> (date accessed: 20.12.2023).

determining the motive of intolerance at the initial stage and the possibility of changing the criminal-legal qualification during a pre-trial investigation. We have identified various types of typical investigative situations at the initial stage of deliberate murder motivated by racial, national, or religious intolerance, depending on the source of initiation of a pre-trial investigation and the informational component.

**Початковий етап розслідування
умисного вбивства з мотивів
расової, національної або релігійної
нетерпимості**

Елучка Казарян

Мета статті полягає в окресленні особливостей початкового етапу розслідування умисного вбивства з мотивів расової, національної або релігійної нетерпимості. Для досягнення поставленої мети використано загальнонаукові та спеціальні методи дослідження: аналіз, синтез; формально-логічний; логіко-юридичний; юридичного аналізу. Розглянуто особливості початкового етапу розслідування умисного вбивства з мотивів расової, національної або релігійної нетерпимості. Наголошено на важливості визначення типових слідчих ситуацій на початковому етапі розслідування, де проводяться конкретні слідчі (розшукові) дії зі збору інформації, виявлення ознак злочину та формування слідчих версій. На цьому етапі розслідування фахівці розв'язують конкретні завдання, оцінюють слідчу ситуацію, виявляють джерела інформації, визначають напрям розслідування, планують взаємодію з оперативними органами, збирають інформацію про обставини злочину, потерпілого й підозрюваного. Зауважено складність визначити мотив нетерпимості на початковому етапі та можливість змінити кримінально-правову кваліфікацію у процесі досудового розслідування. Підкреслено необхідність ретельного дослідження на початковому етапі, особливо під час розроблення криміналістичної методики, для відмежування вбивства на ґрунті нетерпимості від інших видів убивств. Визначено, що невідкладними слідчими (розшуковими) діями на цьому етапі є: огляд місця події, допит свідків, призначення та проведення судово-медичних експертиз. Класифікація слідчих ситуацій на основі джерел початку досудового розслідування й інформаційних компонентів є підґрунтям для ефективного планування розслідування.

ковому етапі та можливість змінити кримінально-правову кваліфікацію у процесі досудового розслідування. Підкреслено необхідність ретельного дослідження на початковому етапі, особливо під час розроблення криміналістичної методики, для відмежування вбивства на ґрунті нетерпимості від інших видів убивств. Визначено, що невідкладними слідчими (розшуковими) діями на цьому етапі є: огляд місця події, допит свідків, призначення та проведення судово-медичних експертиз. Класифікація слідчих ситуацій на основі джерел початку досудового розслідування й інформаційних компонентів є підґрунтям для ефективного планування розслідування.

Ключові слова: початковий етап досудового розслідування; умисне вбивство; мотив нетерпимості (расової, національної, релігійної); слідча ситуація.

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