

УДК 343.13

Inna Tsyliuryk

Lviv Polytechnic National University,
Institute of Jurisprudence,
Psychology and Innovative Education,
Associate Professor of the Department of
Criminal Law and Procedure
Cand. of legal sciences, Associate Professor
ORCID: 0000-0002-4776-2278,
inna.i.tsyliuryk@lpnu.ua

Volodymyr Kushpit

Lviv Polytechnic National University,
Institute of Jurisprudence,
Psychology and Innovative Education,
Associate Professor of the Department of
Criminal Law and Procedure,
Cand. of legal sciences, Associate Professor
ORCID: 0000-0002-1664-6696,
volodymyr.p.kushpit@lpnu.ua

CONDUCTING A SEARCH DURING THE INVESTIGATION OF ILLEGAL TRAFFIC OF POISONOUS OR STRONG MEDICINAL PRODUCTS

<http://doi.org/10.23939/law2022.36.259>

© *Tsyliuryk I., Kushpit V., 2022*

The article examines the illegal handling of poisonous or potent drugs, which poses a danger to the health of the population, since the uncontrolled circulation of such items threatens an indefinite circle of participants in social relations. The article defines the tactical tasks of the investigation of criminal offenses and the algorithm for conducting such investigative (search) action as a search.

It has been proven that the specificity of conducting a search during a pre-trial investigation of criminal offenses related to the illegal circulation of poisonous or potent medicinal products is a number of provisions, the knowledge and consideration of which will allow full use of the capabilities of this SRD. It is noted that it is necessary to involve relevant specialists (chemist, pharmacist, or biologist) who can provide substantial assistance to the investigator in identifying, describing, packaging and removal of dangerous materials, as well as an accountant – experienced in financial transactions for the registration of actions with poisonous or potent medicinal products at enterprises, institutions, organizations of their legal circulation, and, if necessary, a technologist of the relevant industry – to identify facts of violations of technological processes committed for the purpose of embezzlement such

medicines. In turn, during the search, the seized objects are packed and sealed with tags imprinted with a seal (stamp) and signatures of the investigator, suspect, witnesses.

Key words: criminal offense; pre-trial investigation; investigative (search) actions; search; illegal trafficking; potent drugs; poisonous drugs.

Formulation of the problem. Conducting a search during a pre-trial investigation of criminal offenses related to the illegal circulation of poisonous or potent medicinal products is one of the ways to obtain evidence of the suspect's criminal and illegal activities. The search can be carried out at the place of residence, place of work of the suspect, in a vehicle, garage, cottage, etc. At the same time, the result of the pre-trial investigation of criminal offenses of this category directly depends on the timeliness of conducting and competent organization of this investigative (search) action.

Analysis of the study of the problem. Scientists such as Yu. P. Alenina, L. I. Arkusha, I. V. Basista, V. P. Bakhin, V. D. Bernaz, R. S. Belkin, V. I. Vasylynychuk, V. A. Kolesnyk, O. N. Kolesnychenko, V. O. Konovalova, I. I. Kotyuk, V. S. Kuzmichev, V. K. Lysychenko, V. G. Lukashevich, E. D. Lukyanchikov, A. V. Movchan, V. V. Nazarov, D. Y. Nikyforchuk, Yu. Yu. Orlov, M. A. Pohoretskyi, V. D. Pcholkin, O. S. Sainchyn, M. V. Saltevskyi, M. M. Serbin, O. V. Taran, O. Yu. Tatarov, V. V. Tishchenko, L. D. Udalova, V. G. Khakhanovskyi, P. V. Tsymbal, K. O. Chaplinskyi, S. S. Chernyavskyi, Yu. M. Chornous, V. Yu. Shepitko, V. V. Yusupova, O. G. Yanovska and others.

The purpose of the article is the study of theoretical provisions and practical recommendations aimed at improving the organization and tactics of conducting a search during the investigation of the illegal circulation of poisonous or potent medicinal products.

Presentation of the main material. It should be noted that a search is an investigative (research) action, the content of which is a forced inspection of premises and structures, areas of the area, individual citizens, their clothes and belongings with the aim of identifying and recording information about the circumstances of the commission of a criminal offense, finding the instrument of a criminal offense or property, which was obtained as a result of its commission, as well as establishing the location of the wanted persons [1, p. 423].

The general tasks of the search are:

- 1) detection and removal of:
 - tools of a criminal offense (for example, weapons, burglary tools and other objects);
 - objects with traces of a criminal offense or those that are the result of criminal activity (for example, forged documents, counterfeit money);
 - objects and valuables obtained (acquired) by criminal and illegal way;
 - documents that are important for the pre-trial investigation or characterize the identity of the criminal (photographs, audio and video recordings, letters, diaries, notebooks);
 - objects that were used for the implementation of a criminal and illegal plan;
 - objects that were withdrawn from civilian circulation, prohibited for use or requiring special permission, regardless of whether they are related to criminal proceedings or not (firearms and melee weapons, narcotic drugs, psychotropic, explosive or poisonous substances, secret documents);
 - property to ensure compensation for damages (for the purpose of securing a civil claim) or for the purpose of possible confiscation;

Conducting a search during the investigation of illegal traffic of poisonous or strong medicinal products

– other objects that are important for the pre-trial investigation and act as an instrument of establishing the objective truth;

1) detection: – persons who are hiding from the investigation and the court or have escaped from custody or places of deprivation of liberty and are wanted;

– corpses and their parts;

– animals (those that were used as means or instruments of committing a criminal offense);

2) verification of evidence collected during criminal proceedings and receipt of new evidence and verification of investigative versions put forward by the investigator at the initial stage of the pre-trial investigation;

3) establishment of circumstances that contributed to or prevented the commission of a criminal offense, taking preventive measures, etc. [2, p. 288–289].

The specificity of conducting a search during a pre-trial investigation of criminal offenses related to the illegal circulation of poisonous or potent drugs is a number of provisions, the knowledge and consideration of which will allow to fully use the possibilities of this investigative (search) action. Such provisions should include:

a) places of search based on the data of forensic characteristics about the place of commission of criminal and illegal acts with poisonous or potent medicinal products;

b) objects, as well as documents, the identification and removal of which should be paid special attention;

c) places of possible discovery of objects and documents;

d) procedure and features of their withdrawal;

e) peculiarities of recording in the protocol the progress and results of the search.

A search must be conducted:

1) when a person is detained and poisonous or potent drugs are seized from him (first and second investigative situations) – at the place of residence of the detained person, as well as at his close relatives (if there are sufficient grounds to believe that such drugs may be stored in them). In such cases, both poisonous or potent drugs and their packaging elements, in particular, containers, or wrapping paper (newspapers, pages from books or books with partially torn pages) should be identified and seized, especially if the detainee or buyer has packed them in a similar material, devices for packing liquid, loose, poisonous or potent medicines (scales, graduated containers, funnels, used syringes, especially if microparticles of the substances that were packed remained on them, empty ampoules, vials, syringe tubes, etc.) [3].

Also, during the search, it is necessary to remove powders, tablets, ampoules that do not have information about their name and purpose, as well as all found chemicals (especially those found in large quantities, which may indicate that they are stored for the purpose of sale, and not for personal use) and equipment, including bags, briefcases, clothes belonging to the detainee and which, according to the testimony of eyewitnesses to the event, were previously with him (on him) during the sale or purchase of poisonous or potent medicinal products.

At the same time, it is necessary to remove items that testify to the sources of purchase of poisonous or potent medicinal products (prescriptions, invoices, passes to chemical and other enterprises, institutions, organizations, notes, business cards with phone numbers, addresses, names, nicknames of alleged sellers (buyers) or other co-conspirators, photos, answering machine recordings, video tapes, by which it is possible to establish connections between the suspects and other persons and to identify them by voice, etc.).

Suspects usually keep such items at home, both in a visible place (in the case of engaging in a “family business” and organizing the temporary storage or sale of poisonous or potent medicinal products)

and can be disguised inside other items in a refrigerator or among tools, household items in garages, storerooms, sheds near the place of residence, etc.

2) when establishing the source of purchase of poisonous or potent drugs (a person who illegally manufactures, stores, and sells such materials) – at the place of residence and place of work of the specified person.

In this case, the subject of the search may be poisonous or potent drugs, as well as money obtained from the illegal sale of such drugs. However, in addition to these items, when checking the version about the production of poisonous or potent medicinal products, the subject of the search is also: equipment intended for their production, semi-finished products, blanks, “production” waste (used reagents, containers, damaged packaging, etc.), special literature (textbooks on chemistry, biology, articles, notes, letters with diagrams, formulas, etc.), handwritten texts of similar content; when checking versions that a person is not a manufacturer of poisonous or potent medicinal products, but obtains them by withdrawing them from legal circulation: prescription forms, demand invoices (clean or filled), seals, false documents of enterprises (institutions, organizations) that carry out “pseudo-legal” activities with poisonous or potent medicinal products, etc.

3) In the presence of information about embezzlement – the subject of the search may be poisonous or potent medicinal products removed from legal circulation at the enterprise, institution, or organization. Theft can be carried out at any of the stages of the legal circulation of poisonous or potent medicinal products, therefore the places of search should be determined depending on the available information about the source of the entry of these drugs into illegal circulation.

It should be borne in mind that embezzlement is directly related to the violation of the rules of production, manufacture, acquisition, storage, release, accounting, transportation, forwarding of poisonous or potent medicinal products, accordingly, searches may be conducted to identify:

a) unaccounted poisonous or potent drugs, as well as those substances from which fictitious acts of transfer for return to the manufacturer are made;

b) unaccounted, unearned money;

c) papers with any “accounts”, drafts;

d) documents recording any actions with chemical substances, paying special attention to duplicates, documents with signs of corrections, acts of write-off or destruction of documents, especially strict reporting. The specified items and documents can be located separately from others (official documentation, raw materials, products) – among the personal belongings of employees, or in utility rooms, separate boxes, containers, etc.

In addition, the seizure of documentation related to the legal circulation of poisonous or potent medicinal products at enterprises, institutions, organizations cooperating in the relevant field with the institution under inspection may be carried out. These can be documents for the release or return of batches of poisonous and potent medicinal products at production enterprises, at suppliers of the specified substances, documents for transportation in transport enterprises, accounting, statistical and other documentation in the accounting department, planning, statistical or technological units, documentation of the inspection nature in various control bodies (control and audit, state inspections, audit firms, etc). Further, after identifying suspected persons who had direct access to poisonous or potent medicinal products and probably committed embezzlement, a search should be conducted at their place of residence.

It should be noted that preparation for the search is of great importance to achieve the set goals. Since in the process of preparation, the participants of this investigative (search) action must be familiarized with the purpose of the search, the appearance of poisonous or potent drugs, their possible packaging, specific smell, and must be prepared with the appropriate technical means (dipstick, laboratory scales, optical devices, screwdrivers, callipers, packing material, etc). It is important to involve relevant specialists (chemist, pharmacist, or biologist) who can provide substantial assistance to the investigator in

identifying, describing, packaging, and removing dangerous materials, as well as an accountant – experienced in financial operations for registration of actions with poisonous or potent medicinal products at enterprises, institutions, organizations of their legal circulation, and, if necessary, a technologist of the relevant industry – to identify facts of violations of technological processes committed with the aim of stealing such medicinal products. In turn, during the search, the seized objects are packed and sealed with tags imprinted with a seal (stamp) and signatures of the investigator, suspect, witnesses.

At the same time, certain safety rules must be observed when handling poisonous or potent medicinal products. During extraction, for packing liquid chemicals, it is advisable to use glassware that is hermetically closed, filling which you need to remember the need to leave free space inside. At the same time, the packaging should exclude the mixing of the contents of different containers and their depressurization. In addition, before placing in a box or drawer, glassware with chemicals must be wrapped with a soft material to prevent damage during further storage and transportation.

Thus, both in the case of an inspection of the scene of the incident and in the case of a search and other investigative (search) actions during the pre-trial investigation of criminal offenses related to the illegal circulation of poisonous or potent medicinal products, the presence of relevant specialists must ensure compliance with safety standards and the appropriate procedure for identifying, fixing, extracting, and transporting material evidence.

Conclusion. During the search, the investigator aims to identify objects of a criminal offense, including poisonous and potent drugs, equipment intended for their production or manufacture, cash, documents, as well as other traces, things, and objects (prescriptions, invoices, passes for chemical, pharmaceutical and other enterprises, special literature, formulas derived in the notes, etc.), related in a certain way to the event of a criminal offense.

Documents (duplicates, documents with signs of corrections, acts of write-off, especially strict reporting) belong to the specific objects of searching for traces of violations of the rules of production or manufacture of poisonous and potent medicinal products.

The article outlines the main prerequisites for the effective conduct of a search during the investigation of the illegal circulation of poisonous or potent medicinal products, in particular: preliminary study by the investigator of the place of its implementation, drawing up a written plan, familiarization with the appearance of poisonous and potent medicinal products, their possible packaging, specific smell, equipment appropriate technical and protective means (gloves, masks, dipsticks, scales, optical devices, screwdrivers, measuring pliers, packaging material, etc.), suddenness, ensuring the protection of entrances/exits from the premises and the involvement of specialists (from the chemical, pharmaceutical, accounting, and experts in the production technologies of such medicines).

REFERENCES

1. *Kryminalistyka* (2020): pidruchnyk / [V. V. Piaskovskyi, Yu. M. Chornous, A. V. Samodin ta in.]; za zah. red. V. V. Piaskovskoho. 2-he vyd., pererob. i dopov. Kharkiv: Pravo. 752 p.
2. *Kryminalistyka* (2017): pidruch. dlia stud. vyshch. navch. zakl. / [K. O. Chaplynskyi, O. V. Luskatov, I. V. Pyrih, V. M. Pletenets, Yu. A. Chaplynska]. 2-e vyd., pererob. i dop. Dnipro: Dniprop. derzh. un-t vnutr. sprav; Lira LTD. 480 p.
3. Denysiuk S. F. (1999). *Obusk v systeme sledstvennykh deistvyi (taktyko-krymynalystycheskye problemu)*: nauch.-prakt. posob. / S. F. Denysiuk, V. Yu. Shepytko. Kharkov: Konsum, 160 p.

Дата надходження: 02.09.2022 р.

Інна Циліурік

Національний університет “Львівська політехніка”,
доцент кафедри кримінального права і процесу
Навчально-наукового інституту права, психології та інноваційної освіти
кандидат юридичних наук, доцент
ORCID: 0000-0002-4776-2278,
inna.i.tsyliuryk@lpnu.ua

Володимир Кушпін

Національний університет “Львівська політехніка”,
доцент кафедри кримінального права і процесу
Навчально-наукового інституту права, психології та інноваційної освіти
кандидат юридичних наук, доцент
volodymyr.p.kushpit@lpnu.ua

ПРОВЕДЕННЯ ОБШУКУ ПІД ЧАС РОЗСЛІДУВАННЯ НЕЗАКОННОГО ОБІГУ ОТРУЙНИХ ЧИ СИЛЬНОДІЮЧИХ ЛІКАРСЬКИХ ЗАСОБІВ

Досліджено незаконне поводження з отруйними чи сильнодіючими лікарськими засобами, яке становить небезпеку для здоров'я населення, оскільки безконтрольний обіг таких предметів загрожує невизначеному колу учасників суспільних відносин. Визначено тактичні завдання розслідування кримінальних правопорушень й алгоритм проведення СРД обшуку.

Доведено, що специфікою проведення обшуку під час досудового розслідування кримінальних правопорушень пов'язаних із незаконним обігом отруйних чи сильнодіючих лікарських засобів є низка положень, знання та врахування яких дасть змогу повною мірою використовувати можливості цієї СРД.

Зауважено, що до участі в проведенні обшуку під час досудового розслідування кримінальних правопорушень, пов'язаних із незаконним обігом отруйних чи сильнодіючих лікарських засобів, варто залучати відповідних фахівців (хіміка, фармацевта, або біолога), які можуть надати істотну допомогу слідчому у виявленні, описанні, упакуванні та вилученні небезпечних матеріалів, а також бухгалтера – досвідченого у фінансових операціях з оформлення дій із отруйними чи сильнодіючими лікарськими засобами на підприємствах, установах, організаціях законного їх обігу, та за необхідності технолога відповідної галузі – для виявлення фактів порушень технологічних процесів, вчинюваних із метою розкрадання таких лікарських засобів. Об'єкти, вилучені під час проведення обшуку, упаковують та опечатують бирками з відтисненням печатки (штампа) та нанесенням на них підписів слідчого, підозрюваного, понятих.

Ключові слова: кримінальне правопорушення; досудове розслідування; слідчі (розшукові) дії; обшук; незаконний обіг; сильнодіючі засоби; отруйні засоби.