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PROBLEMS IN PROVIDING OF CRIMINALISTICS FACTS INVESTIGATION OF THE MISSING PERSONS

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Summary

This article considers the problem of the use of criminalistic science advances, particularly information-analytical and methodical investigation of the facts of person disappearance, developing of adequate criminalistic methods for this purpose, techniques, typical tactical operations. It becomes particular relevant in connection with the need to provide effective investigation of such facts as the important areas of implementation of international obligations of Ukraine, harmonization of criminal procedural mechanism in accordance with European standards of legal proceedings, the implementation of the adversarial principles, ensuring the balance of public and private interests, rights and freedoms human and citizen in the field of law enforcement. Formation of the conceptual provisions of criminalistics tactics and methods of investigation of the facts missing of persons, improving the interaction of pre-trial investigations and operational units in this area due to the acute needs of practice, which determines the need for their scientific thinking and modern legal basis in reality.

Key words: criminalistics, security, criminal proceedings, pre-trial investigation, disappearances of persons.

Аннотация

В статье рассматривается проблема использования достижений криминалистики, в частности, информационно-аналитическое и методическое обеспечение расследования фактов безвестного исчезновения лица, разработка в этих целях адекватных криминалистических приемов, методик, типовых тактических операций. Она приобретает особую актуальность в связи с необходимостью обеспечения эффективного расследования таких фактов как важного направления исполнения международных обязательств Украины, гармонизации уголовно-процессуального механизма с европейскими стандартами судопроизводства, реализации принципов состязательности сторон, обеспечения баланса публичных и частных интересов, соблюдения прав и свобод человека и гражданина в этой сфере правоохранительной деятельности. Формирование концептуальных положений криминалистической тактики и методики расследования фактов безвестного исчезновения лиц, усовершенствование взаимодействия органов досудебного расследования и оперативных подразделений в этом направлении вызвано острой потребностью практики, которая предопределяет необходимость их научного осмысления и обоснования в современных правовых реалиях.

Ключевые слова: криминалистика, обеспечение, уголовное производство, досудебное расследование, безвестное исчезновение лица.

Problem definition. Provisions of part 1 art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 stipulate that the State shall protect the right to life of every person under its jurisdiction. Law enforcement agencies acting within the scope of their competence should implement the State's positive obligation to protect this fundamental right. There duty is to carry out preventive operational measures to protect a person, whose life is under the threat of criminal acts, by discovering information about real or imminent danger to life of third persons, and to take certain steps to avoid such threats and carry out efficient investigation in case such threats

are nevertheless accomplished. Given the above, the mentioned issue may be characterized as the general problem of how to ensure *efficient investigation* of facts in case of persons gone missing.

Recent researches and publications.

Issues of theory and practice of investigation and solving of missing persons cases have been in the focus of attention of domestic and foreign scholars: Iu.P. Alenin, V.P. Bakhin, R.S. Bielkin, V.P. Cilvik, V.I. Halahan, V.H. Honcharenko, O.M. Dzhuzha, A.Ia. Dubynskyi, V.A. Zhuravel, A.V. Ishchenko, O.V. Kaplina, N.S. Karpov, Ie.D. Lukianchykov, M.M. Mykheienko, D.I. Nykyforchuk, M.A. Pohoretskyi, S.M. Stakhivskyi, O.Iu.



Tatarov, V.V. Tishchenko, L.D. Udalovala, S.S. Cherniavskiy, V. Iu. Shepitko, M. Ie. Shumylo and others. These authors have undoubtedly discovered many new facets in the theory of criminal process, criminalistics and operational search activities in the context of crime investigation and solving and have laid the general scientific foundations for further research into the issues of solving and pre-trial investigation of criminal offences. However, issues relating to pre-trial investigation of the facts of persons gone missing in modern conditions remained beyond the scope of their attention.

Purpose of the article. This article is devoted to the study of problems of the use of criminalistic science advances, particularly information-analytical and methodical investigation of the facts of person disappearance, developing of adequate criminalistic methods for this purpose, techniques, typical tactical operations.

Statement of the basic material. To ascertain the whereabouts of missing persons and discover the reasons of their disappearance, the Ukrainian law enforcement agencies carry out relevant search activities which represent a statutory set of organizational, operational search, investigation (search) and undisclosed investigation (search) activities.

Until the Criminal Procedure Code of Ukraine (the Ukrainian CPC) in the wording of 2012 came into effect [1], there were two consistently progressive stages in the missing persons search practice prescribed by the legislation regulating this area of law enforcement agencies activity. The first stage is *the criminal procedure stage*, at which a report or message about a person gone missing is received, registered and verified, with a subsequent procedural decision made subject to art. 94 of the Ukrainian CPC (wording of 1960) [2]. If results of pre-investigation verification provided sufficient data demonstrating elements of crime, criminal proceedings were commenced. The second stage is the *operational search stage*. If a decision was made not to commence criminal proceedings in respect of a report or message about a person gone missing accepted, registered and verified according to the established criminal law procedure, according to paragraph 4, cl. 1 of art. 6 of the Law of Ukraine "On Operational Search Activities" [3] it constituted the

grounds for implementing operational search activities and means, and after the decision-refusal to institute criminal proceedings was issued (i.e. in 10 days), a missing person operational search file was opened [9].

The current Ukrainian CPC [1] and by-laws adopted on its basis have considerably changed the legal procedure to be applied by internal affairs bodies for handling missing persons cases. Presently, it is directly regulated by art. 214 of the Ukrainian CPC and Order № 700 of the Internal Ministry of Ukraine dated August 14, 2012 "On Organization of Collaboration of Pre-Trial Investigation Bodies and Other Internal Affairs Bodies and Subdivisions with the Aim of Preventing, Discovering and Solving of Criminal Offences". In particular, during 24 hours after a report or message about a child gone missing has been filed, if his/her whereabouts has not been ascertained during this time interval, and also if an adult person is gone missing under the circumstances implying that a criminal offence may be committed in respect of this person, data of the mentioned criminal offence and its preliminary qualification as intentional homicide are entered into the Uniform Register of Pre-Trial Investigations (URPTI) and all of the measures prescribed by the Ukrainian CPC are taken for the comprehensive, complete and unbiased investigation of the circumstances covered by the criminal proceedings (cl. 9.4.2) [5].

At the same time, provisions of part 1 of art.6 of the Law of Ukraine "On Operational Search Activities" still keep in force [3]. Accordingly, availability of sufficient information about missing persons, which is received in the manner prescribed by the law and needs verification through operational search measures and means, is regarded as the ground for commencing operational search activities. For this purpose an operational search file of a respective category is opened and within its framework operational search activities are carried out according to the procedure established by departmental statutory regulations, in particular, the updated Guidelines for organization of search of accused persons, defendant persons evading from criminal punishment and missing persons, and identification of dead bodies [4].

Therefore, activities aimed at establishing the whereabouts of a missing person and the circumstances under which he or she has gone missing is a stand-alone

area of activity and comprises, inter alia, operational search activities of criminal investigation departments of internal affairs agencies. These departments also conduct activities as required in accordance with search files in the proceedings aimed at establishing the identity of dead bodies [6].

Here a question arises whether the present-day activities of pre-trial investigation agencies with the aim of investigating missing persons cases are efficient and effective?

During the first half of 2015, pre-trial investigation agencies had 10 718 criminal proceedings on disappearance of people, 4 223 of which were registered this year. At the end of a specified period, 3 763 and 3 025 proceedings were closed [7, p. 72]. If we assume that the reason for the termination of the investigation was the discovery of a person who disappeared without a trace, or a corpse with no signs of violent death (due to possible errors of statistical method) in the overall array efficiency of investigative activities is 35%, and as for persons allegations of disappearances of which recorded this year in the URPTI – is 71,6%.

In the context of present-day criminal proceedings, a prerequisite for efficient operation of pre-trial investigation agencies and operational units is the use of achievements of the criminalistic theory which is the science dealing with the regularities of criminal activity and its reflection in information sources based on which measures, techniques and methods are developed for collection, study, evaluation and use of evidence with the aim of solving, investigation, examination in court and prevention of crimes [8, p. 868]. The very awareness of these regularities is the foundation for the appropriate information, analytical and methodological support of pre-trial investigation, as well as for the operational algorithms of a prosecutor, an investigator and officers of operational units within the framework of criminal proceedings instituted following reports and messages of persons missing. Such a support should be provided by using the criminalistic technique principles developed by criminalistics, as well as criminalistic tactics and methodology of investigation of such facts.

Besides, in criminal proceedings criminalistics performs the supportive function since it is commonly believed to



be the praxeology of the criminal process [9]. Rules of procedure are implemented only owing to the use of criminalistic means in different situations of pre-trial investigation. Therefore, the highest efficiency of procedural activities depends on the maturity of their system and structure because in view of investigation (search) and undisclosed investigation (search) activities prescribed by the law, criminalistic means should be understood in accordance with a new approach to be adopted, particularly, as the system of criminalistic techniques, model tactical operations, methods of their use and support etc.

Firstly, technical means, tactical techniques and methodological guidelines developed by modern criminalistics should conform to the provisions of the Ukrainian CPC. However, as noted by V.A. Zhuravel, legislation gaps, lack of normalization of separate provisions and existing discrepancies negatively affect the development of necessary criminalistic means, techniques and guidelines [8, p. 910]. For this reason, in view of the updated paradigm of criminal process, development of modern criminalistic concepts in theory and practical recommendations of methodological nature should aim at facilitating the optimization of pre-trial investigation of criminal offences and criminal proceedings in court, as well as at further improvement of the criminal procedure legislation. O.Ia. Baiev believes that the criminal procedure law is stable enough and should be amended for the sake of its quality enhancement only when the need for such changes becomes apparent as a result of summarizing the representative array of criminal cases and analyzing the opinions of experts [10, p. 24].

Secondly, as reasonably indicated by R.S. Bielkin, “neither the law nor bylaws are capable of offering an exhaustive list of technical means and tactical techniques used or to be used in order to investigate and solve a crime. It is unlikely that they may contain the all-embracing guidelines as to how the said means and techniques should be used. <...> It is impossible to squeeze into the law the all-inclusive instructions as to how technical facilities and tactical techniques should be used, since numerous specific situations in which they are used are beyond any possible recitation” [11, p. 236–237]. Summarizing the conclusions made by the prominent criminalistics scholar, V.Iu. Shepitko contin-

ues: “Prescribing the procedural process of investigation and judicial activities, the criminal procedure law is unable to give an answer to the question which depends entirely on the evolving situation: how, in which manner and using which means and methods an investigating action should be carried out under the given conditions. This answer is given by criminalistics which offers an investigator and the court an array of means, techniques and methods for investigating and court activities, thus filling the procedural form with real efficient contents” [12, p. 201–208]. Ie.P. Ishchenko also points: “Criminal process is able only to offer normative models and set certain borders but it does not elaborate on how it should be done. The process determines the most general form, certain abstractions. At the same time, criminalistics gives them necessary substance” [13, p. 9]. Indeed, the criminal procedure law enshrines nothing more than the process of law, offers formal definition of separate procedural steps, time and territorial frameworks of criminal proceedings etc. At the same time, the law does not explain how and using which procedural remedies or their combinations, employing which knowledge, skills and competences the pre-trial investigation of criminal offences should be carried out and the prosecutor’s supervision over such investigation activities should be exercised. Accordingly, the tasks of present-day criminal proceedings (art. 2 of the Ukrainian CPC) should be implemented with the help of updated criminalistic means used by a prosecutor, an investigator and operational unit officers in various situations of pre-trial investigation and criminal proceedings in court.

Thirdly, the principle of publicity in criminal proceedings (art. 25 of the Ukrainian CPC) may be maintained through implementation of all the means prescribed by the law for ascertaining of the event of crime and identifying its offender. This brings to the fore the need for the most efficient organization and exercise by a prosecutor, an investigator and operational unit officers of all the investigation (search) and undisclosed investigation (search) activities necessary in each particular missing person case, other procedural actions, as well as the need for maximum utilization of their potential. To a certain extent, this depends on the adequacy of criminalistic means used in the

course of this activity: criminalistic techniques and methods, their system, model tactical operations etc.

Fourthly, methodological guidelines developed by the criminalistic science should be in accord with the provisions of the current Ukrainian CPC. However, the monitoring of the Ukrainian CPC implementation revealed that the updated criminal procedure legislation is far from being perfect and its shortcomings impede efficient implementation of the rights and obligations prescribed for the parties to criminal proceedings [14]. Therefore, necessary criminalistic means, techniques and guidelines should be developed to provide a prosecutor, an investigator and operational unit officers with a possibility to overcome the existing inconsistencies and imperfections in the law with the help of organizational and tactical means. Besides, the rules established by part 6 art. 9 of the Ukrainian CPC prescribe that in respect of any issue of criminal proceedings which the Ukrainian CPC provisions do not regulate or allow for its ambiguous interpretation, general precepts of criminal proceedings set forth by part 1 art. 7 of the Ukrainian CPC should be applied. Thus, systemic application of principles and provisions of the criminal procedure law may solve the problems of lacking normalization or conflict of law arising in connection with some organization and practical, investigation and procedural actions requisite in particular criminal proceedings.

Consequently, development of conceptual provisions of criminalistic tactics and methods of missing person investigation, enhancement of collaboration of pre-trial investigation bodies and operational units in this area is urgently needed in the context of practical activities of internal affairs agencies and should be comprehended and substantiated in scientific terms in the modern legal realities.

Given the above, the general issue of criminalistic knowledge application is structured at every stage of criminal proceedings and comprises, inter alia, information, analytical and methodological support of pre-trial investigation in missing persons cases, development of adequate criminalistic techniques, methods, model tactical operations etc. This issue gains particular significance in the context of the need for efficient investigation of such cases within the framework



of Ukraine's international commitments, harmonization of the criminal process mechanism in accordance with the European judicial procedure standards, implementation of the adversariality principle and ensuring of the appropriate balance of public and private interests with regard to the observance of human and civil rights and freedoms in this area of state activity.

At the same time, the analysis of prior scientific research efforts indicates that many issues of public prosecution organization and activity with regard to supervision over the observance of the missing persons search laws are lacking thoroughness, especially in the environment of the modern legal framework of Ukraine.

Nevertheless, this does not diminish the contribution made by the authors of scientific explorations who, employing their creative potential, studied the issues of pre-trial investigation and laid the theoretical and methodological foundation for further attempts at developing new knowledge about pre-trial investigation of missing persons cases, and by doing this to a certain extent filled the gaps left by their predecessors and contributed to the establishment of the doctrine of criminal process, criminalistics and operational search activities.

At the same time, until recently no attempts have been made in Ukraine to conduct a comprehensive study of the procedural, criminalistic and operational search aspects of missing persons investigation under the current criminal procedure legislation. This situation is inconsistent with the modern needs of science and the practice of pre-trial investigation and operational search activities.

Conclusions. Under such circumstances, this problem remains topical and calls for a comprehensive scientific research of procedural, criminalistic and operational search measures used for missing persons investigation under the current Ukrainian CPC and the operational search legislation of Ukraine.

For the purpose of finding solutions to these issues, the following lines of further scientific explorations are suggested:

1) critical analysis of the current legal regulation of missing persons search and investigation of facts in cases when persons are missing, and development of proposals for its improvement;

2) establishing and ascertaining the characteristics of criminalistic information about a missing person;

3) working up of criminalistic tactics and methodology for investigation of missing persons cases;

4) developing of model tactical operations to be carried out within the framework of investigation of missing persons cases;

5) elucidating the contents of procedural, organizational and tactical forms of collaboration of an investigator and operational units in the course of missing persons investigations;

6) ascertaining of the information potential inherent in operational combinations and special-purpose computerized databases designated for operational search purposes in case of missing persons search;

7) developing of tactics for the use of special-purpose technical facilities in the course of undisclosed investigation (search) activities carried out within the framework of missing persons investigations.

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