

Forensic characterization of the judicial investigation: the concept and meaning

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Abstract. The article focuses on the development of the forensic characterization of a judicial investigation, considering the last as a necessary component of building an integrated methodology of preliminary investigation and judicial investigation. The paper concludes that forensic characterization of the judicial investigation is as a system of information about the evolving court situations and forensic methods for resolving them. It is an integral component in the structure of the forensic methodology for investigating certain types of crimes. The presented research results can be used in strengthening the practice of law enforcement systems in the border regions suffering from domestic and international crime.

Keywords: judicial investigation, criminal procedure, crime, court

1. Introduction

The current level of technical progress, which is manifested in increasing the degree of informatization of various areas of society, is also reflected in the criminal sphere, leading to a change in traditional forms of criminal manifestations. The newest means of communication allow not only to commit crimes at a considerable distance from the location of the criminal, but also contribute to the spread of criminal experience, in connection with which crime becomes of transnational, cross-border nature. The common features of criminal manifestations that are spreading on the territory of various states require the development of common approaches to their elimination. One of these areas is to solve the problem of using forensic knowledge in the process of trial of criminal cases.

2. Materials and Methods

The study is based on the synthesis of scientific literature on forensic science and other related research fields, using general scientific methods (formal-logical, systemic, etc.) and sociological methods (questioning, survey).

3. Results and Discussion

Forensic characterization of the judicial investigation is an independent structural element of the forensic methodology.

The constituent elements of the forensic characterization of a judicial investigation include the following: the concept and content of the forensic characteristics of the judicial investigation, its relationship with forensic characteristics of the preliminary investigation; investigative situations;

investigative versions and trial planning; tactics of conducting investigative actions in court; tactical techniques, tactical operations and tactical combinations used in court; features of the interaction of the participants of the judicial investigation.

Forensic science was originally created as a science for preliminary investigation; the trial has traditionally remained out of sight of the most forensic scientists. However, in recent years, the situation has begun to change. There is no consensus among criminalists regarding the possibility of using forensic data at the stage of judicial consideration of criminal cases. Back in 1938, A. Tsytkin spoke about the need to use forensic research in court [1]. One of the first works specifically devoted to this problem is a study conducted by L. E. Arotsker, in which he argued that “the court has the opportunity, using all the rights granted to it by the law and the techniques developed by the criminology and methods for obtaining and verifying evidence, to verify all that the investigator has done and to fill in the gaps of the preliminary investigation” [2]. A. N. Vasilyev initially spoke about the possibility of using forensic data in court, saying that the court is not deprived of the opportunity to use recommendations intended for preliminary investigation in its activities [3]. A little later, A. N. Vasilyev began to argue that the inclusion of the tactics of the judicial investigation in the subject of forensic science was an unnecessary complication of the judicial procedure [4].

Currently, there is still no consensus among the community of criminologists on this important issue. Part 3 of Article 15 of the Code of Criminal Procedure enshrines the legal provision that the court is not a body of criminal prosecution, does not act on the prosecution or the defense. The court creates the necessary conditions for the parties to perform procedural obligations and exercise the rights granted to them. Changing the current criminal procedure legislation again led to the emergence of a discussion about the possibility of applying criminalistic recommendations in court. Thus, Yu. V. Korenevsky notes that “... ensuring a full and comprehensive investigation of the factual circumstances of a crime depends not only on the exact execution of the procedural law by the court and participants in the court proceedings, but also on the expedient, skillful use of methods and techniques developed by criminology” [5].

We share the position of those authors who talk about the need to develop forensic recommendations for the trial of criminal cases. Despite the fact that under the current legislation, the court cannot independently carry out investigative actions aimed at collecting evidence, a judicial investigation is unlikely to be effective without the use of forensic knowledge. A survey of judges showed that 77% of those judges being polled consider the use of forensic recommendations in court as valid, since they contribute to an objective hearing of the case, help to clarify the factual circumstances of the case. In particular, they can be used during interrogation in court. 46% of the interrogated judges and prosecutors answered that they have practical experience in investigating criminal cases.

The possibility of using forensic recommendations at the judicial investigation stage is laid down in the Code of Criminal Procedure of the Russian Federation itself. Thus, Chapter 37 of the Code of Criminal Procedure of the Russian Federation provides for the possibility of conducting investigative actions in court (interrogations, inspections of terrain and premises, production of forensic examination, interrogation of an expert, investigative experiment, etc.). In our opinion, this necessitates the development of appropriate tactical recommendations for their conduct. The tactics of conducting investigative actions in court differs from the preliminary investigation, which is due both to the subject composition of the participants in the judicial investigation and to the procedural order of its conduct.

A necessary condition for obtaining objective knowledge of a crime event in court is the use of appropriate forensic methods, which are aimed at a comprehensive investigation of the circumstances of the crime. These include the dialectic, program-targeted method of mental modeling of the event, as well as system-structural and versional methods, etc. In our opinion, this indicates the possibility and necessity of using forensic knowledge in courts.

In our perspective, a starting point for the construction of the forensic characterization of a judicial investigation is the forensic characterization of the investigation of crimes. V. K. Gavlo was one of the

first to propose using the concept of a criminalistic characteristic of crime investigation. In his opinion, the forensic characterization of the investigation is a necessary structural component of the investigation methodology, along with the forensic characterization of the crime. The main components of the forensic characterization of an investigation are investigative situations, investigative versions and lines of investigation, developing at the initial and subsequent stages, a system of investigative, operational investigative and other organizational and technical actions and tactical operations that ensure the fulfillment of the objectives of the investigation [6].

All three of the above elements (forensic characteristics of crimes, forensic characteristics of the investigation and forensic characteristics of the judicial investigation) are interrelated. Since the forensic characterization of a crime is an information base about the method of preparation, commission and concealment of a crime, the identity of the criminal, etc. as for the forensic characteristics of the investigation and disclosure of the crime at the stage of preliminary investigation, and for the forensic characteristics of the judicial investigation [7].

At the same time, we believe that the forensic characterization of the judicial investigation has its own specifics, making it an independent structural element of the forensic methodology. This is due to the fact that the court is not bound by the conclusions of the investigating authorities or the amount of evidence available in the case file. The judicial investigation is of an independent nature, representing a new, complete, comprehensive, objective investigation of all the circumstances of the case and the issuance of a lawful and well-founded sentence [8].

As P. A. Lupinskaya rightly notes that “the court powers differ from the powers of inquiry bodies, investigators, prosecutors; therefore, the legislator in the Code of Criminal Procedure of the Russian Federation does not set them a single, common task to take all measures to establish the crime event and perpetrators [9].

The relationship between the preliminary and the judicial investigation was studied in detail in the works of S. A. Sheyfer, who states the following, “The norms of the new Criminal Procedure Code of the Russian Federation do not give grounds to cast doubt on the fact recognized by many lawyers: the evidence base necessary for the proper resolution of the case is formed mainly during the preliminary investigation; the efficiency of justice also depends on the effectiveness of the preliminary investigation” [10]. Both the investigator and the court carry out cognitive activities aimed at investigating the circumstances of a crime event, each of which has its own specific laws related to the formation of evidentiary information, on the basis of which the conviction is pronounced.

Judicial investigation can be presented as a system that includes, on the one hand, the procedure of judicial investigation, regulated by law, and methodical instructions, which are not amenable to legal regulation, on the other. To such methodological instructions, we can include, for example, forensic recommendations on the use of tactics when conducting investigative actions, in particular the choice of tactics, the order of their application, etc.

Essential to the tactics of the judicial investigation is the study of patterns of research and analysis of evidence in court. This is due to the fact that the court does not need to repeat completely the whole process of cognition, which was during the preliminary investigation. The judge has materials of the case in which the defendant’s guilt, formulated by the investigator in the indictment, is substantiated by certain evidence. The court may disagree with the opinion of the investigator and carry out any judicial actions provided for by the Code of Criminal Procedure of the Russian Federation in order to verify findings of the investigator contained in the indictment. The success of this activity is largely connected with the planning of epy tactics of the judicial investigation both by the parties and by the court itself. The essence of planning a judicial investigation of murder cases is to determine the circumstances that must be clarified, the necessary procedural actions and the development of the most appropriate procedure for their conduct. Planning a judicial investigation is a complex mental activity of a judge, prosecutor, defense counsel to ensure a systematic, consistent investigation of the case by the court, it ensures its internal organization and can be considered as a method of organizing the trial. Planning a judicial investigation includes the following: determining the range of circumstances to be proven in the case; collecting and presenting evidence necessary to establish these circumstances;

identification of preliminary investigation gaps and identification of ways to fill them; definition of evidence research tactics; the solution of questions of an organizational nature with the least expenditure of time, money, and force of the court.

The issue of versioning is closely related to the question of planning a judicial investigation. Judicial versions are put forward on the basis of materials of investigative proceedings, primarily. The conclusion contained in the indictment can be called the first judicial version. This version defines the scope and direction of forensic investigation. Versions may arise among participants in criminal proceedings, both when studying the case materials and during the course of the judicial investigation.

The specificity of the judicial investigation, which distinguishes it from the preliminary investigation, also lies in the specific situations that arise in court during the consideration of cases and affect the process of planning, proposing cases, as well as the tactics of conducting judicial and other actions in court. Situations arising during the judicial investigation are characterized by dynamism, various amounts of evidentiary information obtained at a certain moment of the judicial investigation, which determines the choice of the further direction of investigation of the circumstances of the case in court. Proceeding from this, the situation of a judicial investigation is defined as the situation caused by objective and subjective factors that develops at one time or another of the judicial investigation, reflecting the state, course, and conditions of the judicial investigation. The situation of the judicial investigation is characterized by the presence or absence of evidentiary information on the case and determining the course and direction of the judicial examination of the criminal case.

Thus, as constituent elements of the forensic characterization of the judicial investigation are the following: the concept and content of the forensic characteristics of the judicial investigation, and its relation to the forensic characteristics of the preliminary investigation; investigative situations; investigative versions and trial planning; tactics of conducting investigative actions in court; tactical techniques, tactical operations and tactical combinations used in court; features of the interaction of the participants of the judicial investigation.

4. Conclusion

Forensic characterization of the judicial investigation as a system of information about the evolving court situations and forensic methods for resolving them, it is an integral component in the structure of the forensic methodology for investigating certain types of crimes. Forensic characterization of the judicial investigation, along with the forensic characterization of crimes and the forensic characterization of the preliminary investigation, makes it possible to consider the criminal proceedings as a single cognitive process, which contributes to a more effective solution of the tasks of criminal justice.

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