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Legal, Tactical and Forensic Support of the Judicial Investigation of Crimes

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***Abstract* — The article is devoted to legal issues related to criminal justice and is focused on corrupt practices. Both general legal and private law aspects, namely criminal, criminally-remedial, forensic and criminological aspects have been considered resulting in practical recommendations that can be applied in both judicial and investigative practices.**

Keywords — Forensics, tactics, judicial investigation, crimes, corruption, interpretation, recognition

I. INTRODUCTION

The judicial investigation of crimes represents the procedural activity of the subjects participating in a criminal trial. General principles of the judicial investigation of crimes are accurately formulated in the Russian legislation. Considering basic provisions of pre-judicial and judicial proceedings it is possible to speak about both general patterns of a criminal investigation and specific features of legal regulation, and tactical and forensic support of the procedural activity of such participants, as an investigator, prosecutor and others in accordance with Article 37-45 of the Code of Criminal Procedure of the Russian Federation. In term of the defense, the legislation mentions the suspect, the defendant, the defender and other parties as per Article 46-55 of the Code of Criminal Procedure of the Russian Federation.

At the same time, the problem of judicial investigation of crimes in terms of methodological thinking seems to have interdisciplinary nature as the crime is traditionally considered to be a common (single) subject of research in all sections of the crime-related knowledge. Criminal law, criminal procedure, criminology, forensic science, forensic medicine, forensic psychiatry and other disciplines consider various aspects of crime as their research subject. This way they contribute to the final result of the interdisciplinary researches. According to the major materials ensuring efficiency of educational process in the specified and related disciplines, there is a set of methodological materials developed. It considers topical issues of legal, tactical and forensic nature, and also the issues of general and special crime prevention procedures [1].

One of the current problems of crime investigation in the sphere of pre-judicial criminal proceedings is the investigative knowledge, which is considered from the theoretical point of view, at the level of an interdisciplinary research subject.

In this regard, it seems interesting to analyze key patterns of the crime investigation activities at the stages of a criminal case initiation and preliminary investigation. The method offered by the authors, a so-called reverse investigation for determination of complete circumstances of a case, is seen as the method to be also actively applied at the stage of judicial proceedings of criminal cases [2].

In terms of forensics, an effective support of crime investigation in criminal proceedings is multifaceted. For this reason, it is necessary to consider a complex of criminal, procedural, forensic, criminological, medicolegal and other questions within a technique of investigation of certain categories of crimes. For example, the crimes associated with violent actions and mercenary, economic abuses, corruption and terrorism.

Thus, the support of crime investigation is traditionally reflected in various sections of forensics as a subject of criminal knowledge.

II. METHODOLOGY

In terms of methodology, this research is the analysis of judicial and investigative methods, and practices of the Russian laws application in the economic sphere. The following methods are used: statistical, comparative, legislative and sociological. The obtained results made it possible to formulate key parameters which allowed one to reasonably define elements of a corruption-associated crime in the considered sphere and forensically important information, which is primarily contained in documents of the organizational and financial nature.

III. Results and Discussion

The first positive impressions of using the computers were ruined by the ease with which it was possible to steal information stored in them. Basically, this type of offense involved white-collar crimes and personal data theft. According to E. G. Kuznetsova, a computer fraud should be attributed to a special type of the fraud because it does not involve deception as a major component of conventional fraudulence. The theft is committed by using various organizational and technical instruments.

Traditionally crime control is considered as "the comprehensive and systematic activity representing unity of the following three subsystems: 1) general organization of the control; 2) crime prevention; 3) law-enforcement activity".

Thus, the systematic activity of crime control is understood as the subsystems submission to a common goal, which consists in creation of such conditions which would weaken the criminal processes and minimized any harmful consequences of a crime. This is only can be achieved by harmonious work of all parts of the system. Absolutization of any of the crime influencing factors is not capable to yield the necessary result.

In order to substantiate this statement, we will give an example. In the reign period of Catherine II, the system of anti-corruption measures was mainly focused on the damage recovery directed to compensate the damage caused by the bribery. A guilty of corruption was obliged to pay a double size of the bribe sum to charitable institutions and to refund the expenses connected with carrying out the investigative actions. However, this caused an excessive interest in enabling the legislation to the detriment of the penal sanctions. As a result, the public service became much more attractive to corrupt officials that promoted self-identification of this crime.

In the general system of crime control, the forensic measures traditionally occupy one of the main parts. The quality of these measures effects the efficiency of crime control. The context of the Criminal Code revision, which is being prepared, makes it particularly important to address the question of improving the provisions related to the crime control in general and in respect of such dangerous types of the crime as the organized crime and corruption.

The types of criminal organizations include an organized group, criminal society (criminal community), illegal militant group, gang, terrorist group, extremist group, terrorist organization, extremist organization, and non-profit organization encroaching on personality and human rights. Their elements are described in provisions of the Criminal Code. The main criterion of their differentiation is the purpose of their activity. Part 4 of Article 35 of the Criminal Code of the Russian Federation describes a criminal society (a criminal community) as a structure having two specific purposes – commissioning of serious and particularly serious crimes and obtaining direct or indirect financial or other material benefits. The generalized nature of this provision demands all other provisions regulating the responsibility of criminal societies (criminal communities) to be compliant to it. In practice, the analysis of the relevant provisions shows that the course of criminal procedures did not manage to avoid contradictions between the signs of certain implication forms and the essential elements of the offence related to the organization of a criminal society (a criminal community) that pursue some aims (economic, terrorist or extremist) [3].

For improvement of the criminal legislation regulating responsibility of various forms of the organized crime, it is necessary:

- to make a thorough analysis and differentiation of all crime organizations by the special part that would establish responsibility for creation of organized groups and criminal societies (criminal communities);
- to exclude the use of terms ‘community’, ‘formation’, ‘organization’ when the responsibility for creation of organized criminal groups is determined;
- to recognize that a common goal of all organized forms of crime is the commission of crimes of various seriousness and reflect this general conditions in the Criminal Code. The particular purposes of certain criminal forms (including the purposes of creation of serious and particularly serious crimes, unlawful occupation, etc.) are the main criterion of differentiation of all forms of the organized crime, which are listed in the special part of the Criminal Code;
- to revise the provisions’ formulation in the special part of the Criminal Code of the Russian Federation to exclude duplication of any general elements of the organized crime (implication) forms and to stick to specific elements of a particular crime organisation [4].

For example, to exclude the formulation that a terrorist community is a firm group of people from Article 205.4 of the Criminal Code of the Russian Federation (the organization of a terrorist community and participation in it).

In Article 282.1 of the Criminal Code of the Russian Federation (the organization of an extremist community), it is also necessary to exclude the formulation that the extremist community represents an organized group.

The concept ‘communion’ in Paragraph 4 of Article 35 of the Criminal Code of the Russian Federation is characterized by the presence of a structured organized group, or an association of organized groups. Therefore, one organized group cannot be considered as a community.

The analysis of the current legislation shows imperfection of some other provisions regulating responsibility of the organized crime forms. So, the formulation of such a form in Article 239 of the Criminal Code of the Russian Federation (the creation of a non-profit organization encroaching on the personality and human rights) is apparently not fully consistent. The legislator uses the word ‘organization’ to describe organization of activity of religious or public associations concerning which the court made a decision on liquidation or on a ban of activity, which took legal effect in connection with their terrorist activity (Article 205.5 of the

Criminal Code of the Russian Federation) or extremist activity (Article 282.2 of the Criminal Code of the Russian Federation). There is a note clarifying that a person who committed a crime for the first time and voluntarily left such illegal organization is discharged from the criminal responsibility if his or her actions do not contain other actus reus. Having the incentive provisions specified in Articles 205.5, 282.2 of the Criminal Code of the Russian Federation, the legislator did not introduce the same provisions in Article 239 of the Criminal Code of the Russian Federation that. This represents inconsistency and unreasonability, if proceeding from the principles of a system approach in the establishment of a criminal responsibility and discharge from it [5].

It is offered to apply to a non-profit organization encroaching on the personality and human rights the same approach that is used in relation to the terrorist and extremist organizations, i.e. to apply the criminal law after court pronouncement of the decision on liquidation or on a ban of the activity of a non-profit organization. In addition, it is implied to provide the incentive provision to the persons who committed a crime for the first time and voluntarily left such non-profit organization encroaching on the personality and human rights provided that his or her actions do not contain other actus reus.

All proposed measures for improvement of the criminal legislation that are directed to the fight against the organized crime are aimed at maintaining continuity of the criminal regulation and adherence to those legislative instruments, which proved their efficiency in practice. An unjustified variety of the applied conceptual terminology to similar corpora delicti, the mixture of various organizational forms, which is currently observed at characteristic of separate organized crime forms, leads to contradictions between the general and special parts of the Criminal Code and to mistakes in qualification of the unlawful activity by law enforcement agencies [6].

Thus, the crime preventing measures, which take an important part in the general system of crime control, need the constant analysis and improvement for the purpose of elimination of existing disagreements and contradictions.

Close connection and interdependence of criminal provisions in some cases predetermine the need of choosing and analyzing several provisions rather than one. These provisions supplement, develop and specify each other and only in a complex they create a legal basis for the judicial investigation of crimes and decision-making on criminal cases.

When choosing a provision (its interpretation) it is important to consider general instructions and the principles of the relevant legal institute, branch of law, and any documents on legal and casual understanding. A subject applying a law has to have an internal belief that the facts of the case are fully determined and authentic and that they were provided with the possibility to utilize a remedy at law.

Elements of crime qualification consist of an object and the basis. Being a basis for decision making, the provision (provisions) of a law acts as the basis of the crime qualification. The legal facts can act as the objects of the (actions, events) qualification.

The application of a law in criminal proceedings results in withdrawal of charge or a verdict of guilty. It is one of the stages of the judicial investigation of crimes. In the court verdict, on the basis of a full, comprehensive and objective investigation, the essence of a judicial investigation of crime is shown.

Interpretation of the criminal law is crucial for its subsequent practical application.

Judicial interpretation of the criminal law is carried out by higher courts, which have the right to carry out a kind of a synthesis of court practice and also have the right to thoroughly assess and interpret the rules of the laws being a part of the Criminal Code of the Russian Federation [7].

What is judicial interpretation of the criminal law? The legal theory offers a number of types of such interpretation, but we will stop on three options which seem to provide an essential basis for the judicial investigation of crimes and also for making adequate, correct, legal decisions and overrunning certain convictions.

1. An authentic interpretation is a structure of interpretation of legislative provisions which is directed to explanation of the essense of a certain legislation. Federal Assembly is appointed to do such interpretation in the Russian Federation. This interpretation is applicable to all public authorities and judicial systems.
2. A legal interpretation is an interpretation of the legislation which can only be carried out by the State Duma. We should note that, as a matter of fact, this interpretation is identical to the authentic one. Nevertheless, this formulation is more detailed and allows a law enforcement official to clearly and accurately use all provisions of a law in practice.
3. A judicial interpretation can be given practically at any jurisdiction level in the course of application of the criminal law when investigating and handling particular legal matters. All resolutions adopted by the Plenum of Supreme Court belong to such type of the interpretation.

Thus, in the judicial investigation of crimes and in terms of using legal regulations in practice, the interpretation plays a significant role as it allows applying the provisions of a law correctly in a criminal trial.

To put certain provisions of a law into practice, it is necessary to understand and interpret all principles of the legislative base accurately. Otherwise, criminal trials will lack clarity and adequacy. At the same time, some special attention should be paid to correct qualification of a socially dangerous act as it forms a basis for protection of interests and freedoms of the citizens.

Many legal consequences depend on the correct qualification of crimes:

- recognition of the grounds of criminal responsibility;

- possibility (or impossibility) to relief from criminal responsibility;
- type of punishment, amount of penalty;
- type of detention facility in case of deprivation of a person's freedom;
- possibilities to identify any repeat offenses;
- conditions of early release from punishment;
- jurisdiction;
- arrest, etc.

Thus, qualification (criminal assessment) of an act is very important. The defendant's future and the functioning of the justice system depend on it.

Qualification of a crime is carried out during preliminary investigation of criminal cases, their transfer to the court, judicial proceedings and adjudication. It also encompasses a problem of cassational procedure and review proceedings on a criminal case.

The results of crime qualification, i.e. a conclusion that a certain act contains the actus reus as per the established criminal regulations, are reflected in criminal procedure acts:

- order on institution of criminal proceedings and order on refusal to institute criminal proceedings,
- resolution on indictment as a defendant,
- resolution on application of interim measures to a suspect (defendant),
- charge sheet,
- judgment of conviction.

These documents specify the crime qualification by naming the exact articles of the criminal law according to which the person who committed a crime is subject to criminal responsibility and punishment.

The qualification of crime is one of the major working aspects of the law-enforcement bodies. Therefore, the criminal procedures grant to a law enforcement official the fullest powers in crime qualification. The same also generates full responsibility of a person applying a law to the decision made for a case and specifying the crime qualification.

IV. Conclusion

The system of scientifically based recommendations that takes into account the procedural specifics can be efficiently applied not only by investigators, but also by other participants of the judicial proceedings. This is supported by the judicial and investigative practices [8].

Thus, the topical issues of the law-enforcement practice considered above can form a basis of the organization and maintenance of the educational process within the master program 'Legal, Tactical and Forensics Support of a Judicial Investigation of Crimes' that, in our opinion, is important to form the basic system thinking in the sphere of professional activity.

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