

Theoretical Preconditions for Criminological and Criminalistical Approach on Ensuring of Investigation of the Violent Crimes, Committed in Correctional Facilities of CIS Countries

¹Klara A. Issayeva, ²Syrym A. Avgustkhan, ³Almaz T. Kalbayev and ²Azamat Alisherov
¹Kyrgyz National University named After Jusup Balasagyn
²Chui University,
³Member of Bar of Chuya Area, Bishkek, Kyrgyz Republic

Abstract: An study is considered the reasonable theoretical preconditions for an integrated approach on ensuring of investigation of the violent crimes committed in criminal correctional facilities and taking into account it, there is offered the comprehensive whole of criminalistics ensuring of disclosure and investigation of crimes in criminalistics and the constituent elements. On the assumption of the committed violent crimes in the conditions of criminal and correctional facilities and also the carried-out reform of the criminal procedure legislation of the CIS countries, the integrated approach to criminalistics ensuring allowed to define and designate the basic elements of the offered system.

Key words: Convicts, victims, witnesses and victims, investigation of violent crimes, criminological and criminalistical ensuring, criminalistics methods and ways

INTRODUCTION

As analysis is shown, the most widespread violent crimes committed condemned in Criminal Correctional Facility (CCF) are: murders, harming health of varying severity, a crime against sexual inviolability, etc. It is necessary to consider that the above group of crimes possesses not only public danger of criminal acts from the condemned with high latency but also specifics of their investigation, disclosure and the prevention.

In our opinion, efficiency of investigation of the violent crimes committed in CCF depends on their appropriate criminalistical ensuring from its complex positions. It is necessary to notice on ambiguity of approach on the concept “criminalistical ensuring” of investigation of crimes in general. The available sources, testified to it and observing wide polysemy are reasons of the divergence among scientists in their interpretation at the using of this term. It has no doubt that the offered term and specified approach will cause ambiguous reaction among the legal public. So, it is offered the term: “criminological and criminalistical ensuring” and therefore, being expedient, we need to substantiate of the chosen position.

Proceeding from the analysis of legal sources, it is followed that each specific areas of law puts the substantial elements in this concept, proceeding from the questions regulated by them. And if to speak about criminalistical ensuring in general, common comprehension among scientists-criminalists there isn't observed.

For example, some lawyers understand the criminalistical ensuring only as system of the Technical and Criminalistical Ensuring (TCE) but thus they take only daily activity of criminalistical divisions and their organizational structures (Lokhov, 1980). Others for example, Skorchenko (1999), considering the matter from a position of technical and criminalistical ensuring, include in this content such elements, as: legal, scientific and organizational support.

That is by the specified researcher TCE is considered as a kind of activity. Similar approach is observed and in researchers of other researchers as Cherenkov (1999) and Gayduk (1995), who consider that there will be correct the integrated approach to activity of TCE as this kind of activity includes solution of number of problems, namely: legal, methodical, organizational, scientific and technical.

Proceeding from the analysis of research of Belkin *et al.* (1997), it is followed, that the most correct in system of criminalistical ensuring, it is necessary to mark out three subsystems, such as: criminalistical education, criminalistical value, criminalistical equipment. Together with it, Professor Belkin focused attention on means of introduction in practice of scientific criminalistical values which are technical and criminalistical means (Anonymous, 1997).

We don't pretend to indisputability of judgments but at the same time, we consider that such positions of Professor Belkin limits the frameworks of this concept by

force of emphasis only on criminalistical equipment, where, in his opinion only it has key value. At such approach, we consider that there are narrowed tasks of disclosure and investigation of a crime because of an exception of other sections of criminalistics of system of criminalistical knowledge, in this case it is about tactics and technique where it also has to be put to the practice.

Unlike above stated the wide interpretation, in our opinion, according to the considered term, it is given by Volynskiy (1994). So, he emphasizes "TCE of disclosures and investigations of crimes is organizationally-functional system, directed on creation of conditions of constant readiness of services and divisions of law-enforcement bodies to the fast and effective solution of technical and criminalistical tasks and on practical realization of these conditions for receiving, accumulation, processings of criminalistical and significant information and its use in the process of disclosure and investigation of crimes".

Rather interesting and deserving attention, in our opinion, it was chosen approach to concept and the contents of TCE by Karlov (2006a, b). The researcher is considered TCE from a position of system and active approach and thus, in his opinion: "the applied technical formula, consisting of three components as subjects and objects of activity and this process is basic (actually the activity, acting as necessary communication between them)".

Bakhin (1996) also specifies in his research that: "at the present stage of scientific researches of questions of fight against crime criminalistical ensuring investigation of crimes is considered as creation of appropriate conditions for its high-quality carrying out with use of scientific achievements".

The analysis of the above sources and also other legal literature testifies to emergence of new tendencies on problems of criminalistical ensuring, namely emergence of such directions as: tactical and criminalistical, methodical and criminalistical ensuring of activity of investigation authorities and body of inquiry.

It is necessary to recognize that at the present stage a number of scientists-criminalists adhere to the point of view about necessity of revision of already settled views not only on a case in point but also on structure and the maintenance of criminalistics, proceeding from its modern opportunities as the applied science connected with disclosure and investigation of crimes. In this regard and also as the criminalistics is recognized as the "synthesized" branch of science, it is justified, first, TCE must be considered as one of elements of Criminalistical Ensuring Disclosure and Investigation of Crimes (CEDIC), secondly, as sources of criminalistical ensuring it has to be considered the modern achievements, not only natural

and technical but also the humanities, thirdly, it is necessary to recognize criminology and criminalistical ensuring as one of its formed theories in this structure.

MATERIALS AND METHODS

There were chosen the initial preconditions of justification at chosen approach, first of all: the first, it is the settled concepts of "technical and criminalistical ensuring" which were stated above. The second, it is the crime which was studied by a number of sciences. It is rather difficult and multidimensional phenomenon, having social character which demands an integrated approach. The third, it is the closest interrelation of criminalistics and criminology for disclosure and investigation of crimes has, namely.

Various data of criminology are most actively used in criminalistics during development of the criminalistical characteristic of violent crimes and techniques of their investigation including other crimes in general that presents for this branch as information model of crimes.

Where the criminalistics is based on the criminological and criminalistical theory about criminal behavior the personality condemned and his criminal activity, on victimology data of condemned and victim, motives and the purposes of acts where it is allowed to build the conceptual direction of investigation of crimes and also to develop tactical and methodical provisions of the prevention of criminal acts from sides of special contingent.

The studying of motive of commission by the condemned of the violent crimes is allowed objectively and comprehensively to investigate circumstances of the investigated criminal case and also to investigate the reasons and conditions of promoting their commission.

The fourth, it is criminological characteristic about dynamics, tendencies and manifestations of crime are used by criminalistics for development new or for improvement of the existing techniques of investigation of crimes.

The fifth, it is criminalistical works has to be used widely and actively the legal sciences in the theoretical researches which have to serve as "nutrient medium" for law-enforcement practice, creating with separate of them (in this case it is about criminology) a basis for development new and the advanced existing means and methods of investigation.

The sixth, it is the integrated synthesizing approach which has to proceed from those specific tasks which face criminalistics and namely:

- Knowledge of the regularities of objective reality, stimulating development of its public and private theory, being a basis for formation of criminalistical means, ways and methods
- Development of new and improvement of the used tactical methods and methodical recommendations about collecting, research, an assessment and use of judicial evidences
- Optimization of organizational tactical and methodical bases of investigation of crimes
- Development and improvement of criminalistical methods and acts as a deterrent of a crime

And therefore, only essentially new approaches and complex use of a number of theoretical provisions of criminology and psychology will become more increasing key point on creation and use of more reliable and effective ways and methods in disclosure and investigation of crimes.

Certainly, today TCE is the conventional concept which as it was stated above, undergoes changes proceeding from our point of view, in response to requirements of practice. The considered question also arose owing to need of reconsideration of search cognitive activity and possibility of use of results of the researches, conducted by criminologists and psychologists. Therefore, we came to opinion on expediency of an integrated approach to the criminological and criminalistical ensuring as generalizing and integrative category, covering also sections of criminalistics as tactics and techniques.

Proceeding from it, in our comprehension, the criminological and criminalistical ensuring is information system, ensuring development of the criminalistical characteristic of crimes and also effective use of such data, based on modern achievements of the legal and psychological sciences in the process disclosure, investigations and preventions of crimes.

RESULTS AND DISCUSSION

In our opinion, if to review complete system, criminalistical ensuring disclosure and investigation of crimes have to be considered as two-levels: the first level has to be specified as universal criminalistical category at the general level in which has to be entered such subsystems:

- Legal support
- Scientific ensuring

- Criminalistical education
- Organizational support

The second level is criminalistical ensuring as a kind of activity in relation to tasks of investigation of separate types of crimes, consisting of such subsystems as:

- Organizational and administrative
- Technical and criminalistical
- The criminological and criminalistical ensuring and consisting of two elements
- Tactical and criminalistical ensuring of investigation, including the conduct of investigative actions
- Methodical and criminalistical ensuring of investigation of separate types of crimes

It should be noted that criminalistical ensuring in general belongs to a subject of criminalistics as its fundamental task is development new and improvement of already available methods, means of criminalistical equipment, tactics and technique and their introduction in practice of activities of law enforcement agencies for disclosure and investigations of crimes.

The offered elements of the system don't go beyond idea of a subject of criminalistics, recognized mostly scientific legal community and it proceeds from their content, the purposes and tasks, although, they are solved by separate integration of criminalistics with other branches of scientific knowledge. In this case, it is about accumulation of achievements of criminology and psychology in criminalistics, where practical realization is impossible without the interconnected and system solution of legal, organizational, methodical and scientific and technical problems.

If to proceed from traditionally accepted and divided by us directions of criminalistical ensuring investigation, it is necessary to include in it:

- Organizational and administrative
- Technical and criminalistical ensuring
- Tactical and criminalistical
- Methodical and criminalistical

It should be noted that the second direction of criminalistical ensuring is connected with technical and criminalistical ensuring investigation and main priority mainly consists in development, introduction and practical use of technical and criminalistical means and scientific methods for successful disclosure, investigation and the prevention of crimes (Skorchenko, 1999).

Without doubts, use at investigation of traditional and modern criminalistical means and methods create favorable conditions for exposure of persons, involved in their commission.

The third direction is tactical and criminalistical ensuring investigation, including the conduct of investigative actions. Proceeding from the definition, certainly, the main idea must be about application of the most effective tactical strokes and recommendations of the conduct of investigative actions, accompanying investigation of the violent crimes committed condemned in CCF system. The specified direction is closely interconnected with two other directions of the criminalistical ensuring which were stated above.

According to modern conceptions, we agree with position about inclusion in the section of criminalistical tactics: the doctrine about the criminalistical version and planning of investigation, tactical strokes and recommendations of the conduct of separate investigative actions, recommendations of use in the process of investigation of special knowledge and the help of experts (Ishchenko, 2013a).

Proceeding from such approaches there is also defined the definition of the third subsystem of criminalistical ensuring investigation.

The third subsystem has to be based on the organization of investigation of the given category of criminalistical ensuring that testifies about necessity of an integrated approach at ascertainment of circumstances, playing an important role in disclosure and investigation of crimes.

According to the opinion of Kuzmin (2003) it is necessary to consider that at investigation of crimes there is observed the condition of rivalry as there is a collision of interests of various participants of process. And here, it is necessary to consider specifics of the subjects made violence, a situation where was an event; subjective factors, influencing on behavior of the participants and persons involved in the sphere of criminal proceedings.

According to chosen approach and the analysis of other sources, the reasonable and substantial components, forming system of the investigative actions on the considered category of cases have to consist from:

- Information character
- Procedural and tactical character
- Psychological character
- Material and organizational and technical security

It should be noted that the integrated approach to criminalistical ensuring allows to designate basic elements

according to which it is possible to do the typification of investigative actions on this category of cases: first, on existence and character of data about made condemned a violent crime; secondly, on the subject of a crime and its participants; thirdly from specificity, evidence and non-obviousness made condemned of criminal act; fourthly, depending on time and stages of investigation; fifthly, according to the opportunities of achievement of the purpose of investigation connected with exposure condemned committed a violent crime (it can be a favorable or unfavorable situation); sixthly, proceeding from psychological factors (it is character of the relations between participants of process); seventhly, on the purpose and a motivational component of the committed violent crime; eighthly, about existence or lack of corruption components.

Undoubtedly, that investigative action has to be conducted step by step, proceeding from traditionally accepted consecutive stages of their process. Dzhansarayeva (2006) offered a standard version which is rather reasonable, where as a basis there were taken the conventional structure of its organization (Dzhansarayeva, 2006).

At the same time, according to reform of the criminal procedure legislation in a number of the CIS countries, Kyrgyzstan and Kazakhstan have new types of investigative actions which as in a form and in essence differ from the traditional and it is the secret (undercover) investigative actions. Thanks to aspiration of legislators of the given states there was possible to refuse from a stage of initiation of legal proceedings and also to modernize the different types of the state activity, i.e., in the specified case it is considered the integration of Operational Investigation Activity (OIA) in criminal procedure.

It is necessary to emphasize that this system, typical for traditional investigative actions, radically differs on stages and a procedural order of their realization that causes many collisions at the solution of the matter where, it will be demanded further detailed studying as the considered problem.

In this regard, Ishchenko (2013b) absolutely fairly notes that: “ in statement of the concrete tasks and detection of ways of their solution, tendencies of development of criminalistics are shown. It is improved on the basis of communication and continuity between historically developed and new scientific concepts; the active creative adaptation of the last achievements of those sciences, the regulations of which can be useful in domestic criminal legal proceedings”.

CONCLUSION

It is necessary to recognize that it is rather heavy to change the traditional stereotypes, settled in system of scientific knowledge and at the same time, that today the synthesis of scientific knowledge radically changes, that it is predetermined the outlined other approaches to understanding of the nature and essence of criminalistics as synthetic branch of knowledge where it is expedient the integration into it other interconnected branches of science.

In our opinion for today, the criminalistical methods are sharply need in the criminological and psychological ensuring, in use of achievements of the given sciences in practical criminalistical activities, in particular, it concerns in a pretrial stage of criminal procedure.

Frequently, the results of researches of criminologists and psychologists increasingly began to be used by criminalists, though, earlier it had not general character. On the basis of the getting stronger and going deep interaction of criminologists, psychologists and criminalists, it is obviously possible to begin activities for development of essentially new approaches and specific scientific production. In this case, the pushing aside of a traditional criminalistical arsenal isn't considered as an exception of the general work, the main idea consists that a number of theoretical provisions, development and achievements of such branches as criminology and psychology can organically fit into system of the applied "synthesizing" criminalistics science that will allow to increase significantly its potential, having updated tactics and a technique of investigation of crimes, including, having violent character.

Thereby, our attempt to put objective preconditions for emergence and development of one of private theories of criminalistics, namely, the questions of criminological and criminalistical ensuring, disclosure and investigation of crimes will promote to the solution of number of criminalistical tasks which are opened before this branch of science at the present stage.

REFERENCES

- Anonymous, 1997. Criminalistical ensuring of activity of criminal police and bodies of preliminary investigation. Textbook Averyanova, T.V., R.S. Belkin, A.I. Borodulin, V.N. Grigoriev, etc.; Under the editorship: T.V. Averyanova, R.S. Belkin M., New Lawyer, pp: 64-65.
- Bakhin, V.P., 1996. Problems of scientific and methodical ensuring of investigative activity. Moscow, pp: 87.
- Cherenkov, A.M., 1999. Expert criminalistical ensuring disclosure, investigation and prevention of crimes in the conditions of the megalopolis, M., pp: 185.
- Dzhansarayeva, R.E., 2006. Problems of fight against crime in correctional facilities: (on materials of the Republic of Kazakhstan): Dissertation of Doctor of Law. Moscow, pp: 301.
- Gayduk, A.P., 1995. Use of scientific and technical means in disclosure and investigation of extortion. Dissertation of Candidate of Juridical Sciences, M., pp: 276.
- Ishchenko, E.P., 2013a. Criminalistics Manual. Standard of the third generation. SPb.: St. Petersburg, pp: 30.
- Ishchenko, E.P., 2013b. Criminalistics. Manual. St. Petersburg: Printer, pp: 208.
- Karlov, V.Y., 2006a. Use of criminalistical equipment in investigation of crimes. Scientific and practical manual. M.: Examination, pp: 50.
- Karlov, V.Y., 2006b. Use of criminalistical equipment in investigation of crimes. Scientific and practical manual. M.: Examination, pp: 192.
- Kuzmin, R.P., 2003. Psychology of preliminary investigation of the crimes committed condemned in correctional facilities: Dissertation of Candidate of psychological Sciences: St. Petersburg, pp: 187.
- Lokhov, V.L., 1980. Organizational and methodical bases of activity of the specialist criminalist in preliminary investigation. Moscow, pp: 243.
- Skorchenko, P.T., 1999. Criminalistics. Technical and criminalistical ensuring. Manual. Moscow, pp: 21.
- Volynskiy, V.A., 1994. Technical and criminalistical ensuring disclosure and investigation of crimes. M., pp: 67.