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CONSIDERATIONS REGARDING THE USE OF THE RESULTS OF OPERATIONAL-SEARCH ACTIVITIES IN THE PROCESS OF PROOF

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M.M. Kholmatov

Master's Student Of The Academy Of Law Enforcement, Uzbekistan

ABSTRACT

The measures taken in our country for the further development of judicial reforms will undoubtedly help to ensure the independence of the Court, increase the effectiveness of the activities of the preliminary investigative bodies, raise the importance of the lawyer, which, ultimately, is aimed at strengthening the protection and guarantee of human rights in our society.

KEYWORDS

Enforcement agencies, criminal procedural, photographs, phonograms, video recordings, computer data carriers, drawings, plans, schemes, data.

INTRODUCTION

As the President of the Republic of Uzbekistan Sh.M.Mirziyoev emphasized, "Our goal is to protect the rights, freedoms and legitimate interests of citizens in judicial and investigative activities, to further increase the role of a lawyer in criminal, civil, administrative and agricultural cases at all stages of the investigation and court. Protecting the rights, freedoms and legitimate interests of citizens in judicial and investigative activities is an urgent task of today. It is not for nothing that in the coming years we will turn law enforcement into agencies that will serve only and only in the interests of the people without deviations."

The question of the use of the results of operational-search activities in the process of proof has become an urgent topic for various studies by the processalist, criminologist and other scientists of the legal field in the following years. All scientists in their research focused on the need to coordinate criminal procedural and investigative legislation to regulate this process .

In order to correctly solve the problem under consideration, first of all, it is necessary to clearly define the subject of proof, because the investigator should be able to build his entire work on the verification of evidence on this basis. Otherwise,

circumstances unrelated to the case may be investigated, and the process of proof itself will be prolonged and arbitrariness will occur.

Moreover, the object of evidence is not a permanent, stable thing. After all, in the process of proofing, the subject can change, expand, or be clarified and narrowed, because during the process, new, previously unknown circumstances may appear or fail to find its confirmation.

As clearly defined in the criminal procedural legislation, "any legal evidence that is the basis for the inquiry, investigator and court to determine whether a socially dangerous act has occurred, the guilt or innocence of the person who committed this act, and other circumstances important for the correct resolution of the case, in accordance with the law information is evidence in a criminal case" .

In the process of proofing, it is essential to pay attention to verifying the acceptability and relevance of evidence as a guarantee of legality, rights and freedoms of a person and the benefits provided for by the law in solving the case. According to Z.Z. Zinatullin, "If the search activities are carried out in compliance with all the provisions of the law and its results are confirmed, the information obtained in this way can sometimes be used for proofing, but it can also be used for other types of crimes. (according to the source)". For example, a person's application which was taken before the initiation of a criminal case can be considered as an application or explanatory letter. in this regard, N.V. Sibileva states that "Information obtained from a source established by law, but obtained by a person who does not have the right to carry out this investigative action, is not recognized as procedurally acceptable evidence" , and it is appropriate to agree with this opinion.

One of the conditions for recognizing evidence as admissible evidence is that it must be obtained only from the sources directly specified in criminal procedural legislation. Criminal procedure legislation lists these sources, and witness and victim statements can be such sources. Evidence is inadmissible if it is obtained from a source not covered by the law.

As we noted above, evidence can be obtained only from sources provided for by law. In a number of cases, the law clearly specifies the source of evidence. For example, Article 173 of the Code of Criminal Procedure of the Republic of Uzbekistan clearly states which information can be obtained only through an expert examination. They include the causes of death and the nature of injuries inflicted on the body, in case of doubt about his sanity - about the mental state of the accused or the suspect and other information.

A specific procedure for gathering evidence is defined in the Criminal Procedure Law. "...the procedural form of the actions to be carried out on proofing is clearly defined, and each violation of it leads to the violation of the rights of the participants in the criminal proceedings."

Procedural formalization (consolidation) of evidence is a mandatory element of evidence collection, and evidence is considered inadmissible if it is not obtained based on the standards established by the current procedural law.

As a confirmation of our opinion, we quote B.A. Radjabov's opinion that "...strengthening the evidence is an element of the evidence gathering stage of proof" . Some authors "...recognize the evidence-gathering stage of evidence as an element." But we think that the essence of the proof will not change with this. There are also opinions by scientists that "...gathering

evidence means a set of actions aimed at finding, strengthening, obtaining and preserving various evidences." A similar opinion was later expressed by P.A. Lupinskaya, I.M. Gutkin and A.Kh. Rakhmonkulov.

Based on the above considerations, we will focus on the issues of presenting the results of the operational search activity and their procedural strengthening.

First of all, it is necessary to describe the results of the operational-search activity used for the interests of investigative actions. Based on the purpose of the rapid search activity, it is quick information obtained and collected by means of rapid search activities in the field of fighting crime.

In this matter, it is necessary to analyze the existing methodology of using the results of rapid search activities during the proof of criminal cases.

The investigator has legal methods of using the materials presented and requested in the criminal case reflecting the results of the investigative activity.

The investigator has legal ways to apply the materials presented and requested in the criminal case, which reflect the results of the operational search activity.

First, procedural-legal and tactical decision-making:

- a) on initiation of a criminal case;
- b) on refusal to initiate a criminal case;
- c) on sending materials according to their relevance to the investigation;
- g) about transfer of detention;
- d) tactics of investigation and certain investigative actions

and related to the methodology;

e) on the need to conduct additional operational search activities;

j) on conducting a search;

z) to justify the need to carry out rapid search measures related to the restriction of the right of citizens stipulated in the Constitution;

i) its use in making decisions about the expediency of notifying law enforcement agencies of foreign countries.

Second, it has the right to be used as evidence in a criminal case. Sh. Inomdzhonov's opinion that "...the methodological basis of the use of the results of operational investigation in criminal cases should be the rules of the theory of knowledge related to categories such as collection, verification and evaluation of information included as evidence in the criminal process."

After all, the results of the conducted operational search activities are reflected in the operational service documents. In practice, some of them are called operational search activity reports. Naturally, the legal nature of these documents differs from reports on investigative actions, which are one of the types of independent evidence.

The main difference between the reports of operational-search activities and the reports of investigative actions is that the participants of the criminal proceedings possess a direct perception of the circumstances and facts important in the criminal case under the conditions of the relevant investigation or judicial action based on the reports of the investigative

actions. these results, which constitute the content of this type of evidence in criminal proceedings.

The results of direct perception of cases and facts of importance for the work, as well as the reports of operational-search activities. However, this direct perception does not occur by the participants of the process or during the investigation and judicial action, but during the process of pre-investigation search. Moreover, there is a difference between it and the entities making these statements. Although. A. Dolya ""Even if there are arguments, such a point of view, that is, the difference between entities, is not clearly visible" ." In his opinion, "participation of impartial parties is mandatory in the conduct of investigative actions, the participation of the parties as a guarantee of correct, direct perception in the court, the transparency of the trial comes to the fore, this thing does not exist and cannot be in the activity of operational investigation, because it is against its nature, its subject, principles and completely contradicts its duties."

In our opinion, the first problem in this is the use of survey statements that recorded the results of Operational-Search events in the appropriate form, statements of application of technical means, explanatory letters of individuals, written applications, statements of acceptance of oral applications, official references of various accounts, final references to the survey process and results, correspondence and twisted samples, video, , what will be the further fate of operational service documents, known as final references to items? in the solution of the question, the head of the body carrying out operational search activities in accordance with the current regulation issues a submission to the investigator on the submission of materials reflecting the results of the Operational-Search event, these materials are

presented to the investigator according to Articles 198 and 200 of the CPC. It is also possible for the investigator himself to request materials from the subject of this activity according to the results of operational-search activities, as established in articles 199 and 203 of the CPC.

Before the start of the pre-investigation, the procedure for sending the results of the search activity to the investigative body, investigator or prosecutor (by mail, personally delivered or by other methods) is chosen by the body performing the operational search function based on the requirements of the investigator normative documents defining the work procedure in each case. This is the second problem.

Documenting in accordance with the law on Operational Search Function means "the process of collecting and systematizing information carried out during rapid accounting, checking and evaluating the results of rapid search activities (article 18), as well as the process of making appropriate decisions of the operational search body based on them."

Attaching to the documents collected in connection with the results of the Operational Search Function, photographs, phonograms, video recordings, computer data carriers, drawings, plans, schemes, information, as well as other material objects, obtained (prepared) as a result of an operational search event for recognition as evidence in accordance with the criminal procedural law possible. Information about the time, place and conditions of obtaining the attached materials, documents and other objects should be reflected in the notice or reference written on the detection of the signs of a crime. When it is necessary to describe the individual (private) features of the specified materials, documents and other objects, they can be expressed in the form of a

separate appendix to the reference. This is the third problem.

Consideration of measures to ensure their completeness and completeness (preserving against deformation, magnetization, radiation, fading, etc.) of materials, documents and other objects obtained in the process of operational search to be presented to the inquirer, investigator or prosecutor. Materials obtained as a result of acceleration activities, production and other objects will help transfer updated materials (plot parts), the most important parts (sketch parts, sketches) to a single information carrier, and this will help the presented information.

In such cases, the original copies of the materials, documents and other objects obtained as a result of the operational-search activities, if they were not obtained according to the request of the inspection, inquiry, investigative agencies or the prosecutor, are kept in the body that implemented the pre-investigation activity until the criminal case is completed and the court's verdict enters into legal force, or until the criminal case is terminated. This situation is the fourth problem, and at the same time it is the main problem.

When it comes to the features of these problems, using the provided Operational Search Function results should, first of all, reflect certain information.

In order to solve the issue of initiating a criminal case, the information indicating the signs of a crime should be sufficient in the results of the investigative activity, i.e.: where, when and what signs of the crime were detected, under what conditions they occurred, information about the person who committed the crime and witnesses, evidence about the location of objects and documents that may be important, it

should reflect any events and incidents that are important in solving the issue of criminal proceedings.

In the results of the operational search activities provided for the preparation and conduct of the investigative actions - people who are hiding from the inquiry, investigative bodies and the court, who are evading criminal punishment, who have information about the details of the incidents and events related to the criminal case, sources of evidence that can be used for proofing, There should be necessary information to determine the scope and order of conducting procedural actions on a specific case, to choose the most effective tactics of investigative actions, and to create acceptable methods of investigation.

The results of investigative activities submitted for evidence in criminal cases must reflect the information that meets the requirements of the criminal procedural legislation and allows them to be formed. According to Yu.S. Pulatov and A.K. Zakurlaev, "...this process in the operational-search activities of law enforcement agencies can be considered as documenting the illegal actions of persons who are preparing for, committing, committing a crime, and in similar cases."

In order to carry out the planned work, the investigator has the appropriate methods of applying the results of operational search activities. Depending on the specific operational-search event, they will have their ultimate status. Taking into account the above, the results of the operational search function, from the point of view of including them in the process of proving a criminal case, in accordance with the information on the preparation, commission or concealment of traces of a crime by the competent authorities, according to the Law on the Operational Search Activity, preparing the crime or requirements about the persons who committed it. It consists of information and other cases

related to the criminal case, if they can be presented to the investigation, inquiry and investigation authorities before the investigation in accordance with the procedural code.

The established definition makes it possible to define the following features, which reflect the specific characteristics of the results of the operational search activity, as a basis for the formation of evidence:

- compliance of the subject, the grounds and conditions for obtaining information with the requirements of the Criminal Procedure Code;

- availability of factual information about the signs of a crime being prepared, committed, the persons preparing or committing it, which can be submitted to inspection, inquiry and investigative bodies before the investigation, as well as other circumstances included in the subject of evidence in the criminal case;

- the information obtained in operational and official documents, items obtained during the implementation of operational search activities and material carriers to which documents are attached.

The analysis of the conditions of use of the results of operational-research activities in the evidence in criminal cases allows to make legal and reasonable decisions and make recommendations on the nature of the problem under investigation.

Therefore, in such a decision, not only the positive answers to the questions of the relevance of the necessary information to the case and the selection of the type of evidence that will serve as a tool in the criminal process, but also the information necessary for the collection and formation, verification and evaluation of the relevant evidence in the investigation

and in court. It would be appropriate to reflect issues related to the provision of information.

REFERENCES

1. Bednyakov D.I. Non-procedural information and investigation of crimes. - M., 1991., Share of E.A. Use in proving the results of operational-search activities. - M., 1996., V. Karimov B. Quick search and human rights. - T., 2019.
2. Uzbekiston Respublikasi Zhinoyat-procedural codedining 81-moddasi.
3. Zinatullin Z.Z. Criminal procedural proof: a textbook. - Izhevsk 1993. S. 47-48.
4. Sibileva H.B. Admissibility of evidence in criminal proceedings. Kyiv, 2010. - p. 31.
5. Mukhitdinov F.M. Zhinoyat-Procedural Shaki: Nazariy va Methodology Muammolar: Jurid. fan. doc. ... dis. - T., 2005. 27-b.
6. Radjabov B.A. Collection of evidence in the criminal process of the Republic of Uzbekistan, (cyberleninka.ru)
7. Nikiforova E.H. General conditions of proof // Criminal procedure. General part: T., "New century generation", 2002.178-6.
8. Mirensky B.A., Asomutdinov A.Kh., Kamolkhodzhaev D.Yu. Problems of theory of evidence in criminal proceedings. - T. 2002. - p. 149.
9. Znikin V.K. The use of operational-search information in criminal procedural evidence. Author's abstract... thesis.cand. legal Sciences. - Tomsk. 1988. p.70-71.
10. Share P.A. Use in proving the results of operational-search activities. - M., 1996. -p.84.
11. Law of the Republic of Uzbekistan "On rapid search activities" ORQ-344.
12. Zakurlaev A.K., Pulatov Yu.S. Quick search activity: a tutorial. - T., TDUU, 2014. p. 114.