THE Vth KHMYROVSKY CRIMINALISTIC READINGS
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The fifth Khmyrovky Criminalistic Readings is being organized by:
• Kuban State University (Krasnodar, Russian Federation)

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PREFACE

On 17 December, 2021 the fifth applied research conference “Khmyrov Criminalistic Readings” was held in the premises of Kuban State University with participation of academic staff from the Russian Federation, near and far-abroad countries – Belarus, Kazakhstan, Tajikistan, Azerbaijan, Poland, Lithuania, on the occasion of the 45th anniversary of the establishment of the Criminalistics and Legal Informatics Department. The 2021 conference was one of the most representative in the history of this event. More than 100 applications from scholars all over the world were submitted to participate in the Conference.

The Organising and Programme Committees of the Conference included representatives of the Police Academy of the Ministry of Internal Affairs of the Republic of Azerbaijan (Baku, Azerbaijan), Almaty Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan (Almaty, Kazakhstan), Baikal State University (Irkutsk, Russia), Immanuel Kant Baltic Federal University (Kaliningrad, Russia), Belarusian State University (Minsk, Belarus), University of Warmia and Mazury (Poland, Olsztyn), Kuban State University (Krasnodar, Russian Federation), Kuban State University (Moscow, Russia), Kuban State Agrarian University (Krasnodar, Russian Federation), Kuban State Agrarian University (Krasnodar, Russia), Bolashak Academy in Karaganda (Karaganda, Kazakhstan), Krasnodar University of the Ministry of Internal Affairs of Russia (Krasnodar, Russia), Lomonosov Moscow State University (Moscow, Russia), National Research Tomsk State University (Moscow, Russia). Lomonosov Moscow State University (Moscow, Russia), National Research Tomsk State University (Tomsk, Russia), Tula State University (Tula, Russia), Tajik State University of Law, Business and Politics (Khujand, Tajikistan), Mykolas Romeris University (Vilnius, Lithuania), Udmurt State University (Izhevsk, Russia).

The purpose of the conference was to perpetuate the scientific heritage of the outstanding Russian scientist, founder of Kuban school of criminalistics Alexander A. Khmyrov (1925-2017) and to elaborate new approaches to the development of criminalistics, forensic expertise, criminal intelligence and surveillance, evidentiary process and other applied branches of legal knowledge.

Since the time the conference was held for the first time in 2017, certain areas of scientific research have taken shape where the leading scientists share their findings. The conference invariably attracts attention of Russian and foreign criminalists, experts in the field of evidence, researchers in the sphere of forensic examination and criminal intelligence, information technologies in law enforcement and investigative activities, current employees of pretrial investigation agencies, prosecutors, practicing lawyers. Summaries of proceedings of each conference, containing the main theses of papers and presentations discussed, were published.

The conference themes were as follows:

1) Modern problems of criminalistics;
2) Criminalistic aspects of evidentiary process;
3) Trends in development of forensic science;
4) Current issues of criminal intelligence.
5) Interdisciplinary links in forensic science.

The conference was distinguished by its focus on discussion of the raised problems and free discourse on a wide range of opinions on the issues under consideration, with strict observance of scientific ethics. The interdisciplinary nature and the breadth of covered fundamental and practical issues made the conference attractive for specialists from Russia and foreign countries representing various scientific fields. In the course of the conference, it became possible to find solutions to many complex scientific challenges and dilemmas owing to the well-coordinated work of the organising committee and the speakers.
Modern female criminality: primary approaches to study and prevention

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Abstract. Pre-requisites for this research are negative trends of modern female criminality requiring new approaches to the studies taking into account the results of looking for new areas and specific prevention measures. The primary objective of the research is analyzing the modern status of female criminality and developing relevant proposals for prevention. Study methods: dialectical method of cognition as well as general scientific and particular scientific methods. General scientific methods include analysis and synthesis, induction and deduction, logical, systemic-structural methods. Particular scientific methods include statistical, formally legal and some other methods. The novelty is based on using an integrated approach to studying the issues of preventing female criminality and proposals to improve its prevention measures. Results: modern female criminality demonstrating negative trends requires new approaches to study it taking into account the results of looking for new areas and specific prevention measures. Primary trends in prevention include: development and adoption of federal targeted programs Russian Females, Family and Children, that would contain general social measures to prevent female criminality; development and adoption of federal targeted program Prevention of Female Criminality in the Russian indicating specific criminological and individual measures of prevention, one of which is improvement of labor conditions for women, ensuring qualification upgrades and acquiring new skills; increasing the number of social organizations and movements in protection of rights, freedoms and legal interests of females.

Keywords: female criminality, prevention, criminological characteristic, primary approaches

1 Introduction

As any complex social phenomenon, criminality consists of individual parts (types). One of them is female criminality that is often studied by criminological scientists. However, there...
are a lot of criminological issues nowadays that must be answered, so they need further studies [1]. Such issues include:

- why the specific weight of female criminals increases while the overall criminality rates fall down;
- why women commit more untypical female crimes including violent crimes that are more characteristic of men;
- why women use such methods for criminality that are specific for men and why the personality of a female criminal becomes more like that of a male criminal.

To answer these questions, it is required to consider issues related with the position of women in the modern Russian society. In recent years, the role of a woman in the society grows, and women start taking a more notable position in various areas of human activity, for example, in business, politics, art [2-4]. Women have become more liberated, confident, and independent from men, (from husband, in particular), they do not haste to have children, but rather strive to build a career and earn money [5]. Unfortunately, this has its effects on the criminal world [6] where certain changes are observed: women commit crimes more frequently, including grave and especially grave crimes; the specific weight of robbery and brigandage committed by women rises; female criminality becomes grouped or even organized; there are stable trends of return to crime by women released from places of detention [7], which underlines the importance of this problem.

2 Methods and methods

This research uses a dialectical method of cognition as well as general scientific and particular scientific methods. General scientific methods include analysis and synthesis, induction and deduction, logical, systemic-structural methods. Particular scientific methods include statistical, formally legal and some other methods.

3 Results and discussion

Despite a growing specific weight of female criminals (from 15.4% to 16.0%), it remains relatively low (average specific weight of 15.6%). According to statistics, 156,268 females committed crimes in 2013 (their specific weight in the overall count of criminals was 15.4%); 157,484 in 2014 (15.7%); 172,178 (16.0%) in 2015; 148,026 (14.6%) in 2016; 146,916 (15.2%) in 2017; 145,486 (15.6%) in 2018; 142,505 (16.1%) in 2019; 136,318 (16.0%) in 2020.

Female criminality varies in various Russian region. Some regions show negative dynamics of female criminality. For example, the number of crimes committed by women in the Saratov region has increased. 769 crimes were registered in Q1 2021, which is 21.3% higher than the same period of the previous year. Grave and especially grave crimes committed by women have also grown in number.

Female criminality is a type of crime that consists of various parts (kinds) correlated between each other and comprising an independent system – a system of female criminality [8] that is related with the place and role of a woman in the society [9], negative consequences of crimes committed by women, including those of moral nature [10]. Family principles and its functioning as a social institute are impaired [11]. Social risks are increased, including those for minors, when a mother commits crimes rather than a father (as seen in most cases) [12]. An educational function in such families for minors becomes negative. Moreover, social adaption of women convicted for crimes is much more complicated and prolonged than in men. In this connection, crimes committed by women are much more dangerous that those committed by men, since women create a special
marginal environment and an unfavorable social background that harms upbringing of children, among other things. Therefore, a comprehensive study of female criminality represents scientific and practical interest [13].

In various criminological studies, criminal scientists often note that female criminality is generally criminal but has specific features. The structure of female criminality is predominated by criminal offenses committed against property. Women often commit crimes as provided for by Articles 158, 159, 160, Russian Criminal Code, while men mostly commit thefts, robberies, and brigandage. However, in the recent years there is a trend of committing acquisitive crimes related with violence (such as brigandage). A comparatively new female crime is grouping for committing crimes including those against property [14].

Each fifth female crime is a crime against population health related with trafficking of drugs of psychotropic substances. Their motives differ, but in most cases, they include profit, getting valuables by any means, etc.

Women commit crimes against life and health. These crimes are ranked third among women in terms of number. Their specific weight in the overall structure of female criminality is 16%. The most common crime is murder (as indicated by foreign researchers [15, 16]) and gross harm that has a negative trend of insignificant increase in the number of such crimes committed by women. When committing criminal offenses against life and health, women became more violent and cynical.

This requires not just studying the modern female criminality and its negative trends but also using new approaches in studying it. Moreover, it seems necessary to focus on using a personal approach in studying female criminality, e.g., studying personal features of female criminals, namely by using Comprehensive Personality Research Methods (CPRM) that are not actively used in modern criminological examinations. It would be practical to have not only criminological but also integrated studies of female criminality such as criminological psychological, criminological sociological, criminological demographic.

The analysis of existing studies of Russian and foreign scientists [17-20] enables considering prevention of such criminality and identifying its primary areas. Its prevention intended to cut the reasons and conditions of committing crimes by women is one of the key activities of law-enforcement authorities. Personality characteristics of females, their social position, role in the society determine the need for gradual intensification of prevention measures [21].

The scientists note that the starting point of law-enforcement activity in prevention of female criminality is the declared priority areas of the Russian state policy towards women that have not been fully implemented. Such areas of state policy include:

- ensuring conditions for comprehensive real participation of women in the activities of Russia and its state authorities;
- constant learning of new professions by women that would allow them become more competitive on the job market than males;
- increasing salaries of women in budget-funded branches and bringing it to the same level with males [22].

This position is determined by the absence of developed and adopted target federal and regional programs that must stipulate not only the above areas of the Russian state policy towards females but also certain measures to be taken in these areas. In particular, there is no federal target program to prevent crimes committed by females. Adopting such a program would enable for clear statement of the general focus of the state and other subjects in preventing female criminality since crime prevention (including female crimes) is an all-state problem that must be cut at the level of the Russian Federation.
It is required to develop and adopt the Family and Children federal target program (since the last federal target sub-program Children and Family was implemented before 2010) and the Women of Russia federal target program.

Another trend in preventing female criminality is increasing the number of social organizations and movements for protection of rights, freedoms and legal interests of women. There are 250 female non-commercial organizations, out of which only 15 operate for the protection of women rights and freedoms.

4 Conclusion

In this manner, the above shows that modern female criminality demonstrating negative trends requires new approaches to study it taking into account the results of looking for new areas and specific prevention measures. Primary areas in preventing female crimes include:

- development and adoption of federal targeted programs Russian Females, Family and Children, that would contain general social measures to prevent female criminality;
- development and adoption of federal targeted program Prevention of Female Criminality in the Russian indicating specific criminological and individual measures of prevention, one of which is improvement of labor conditions for women, ensuring qualification upgrades and acquiring new skills;
- increasing the number of social organizations and movements for protection of rights, freedoms and legal interests of women.

References


Videoconferencing in criminal proceedings of the Russian Federation: implementing problems

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Abstract. The scientific research aims to study the procedure for the introduction of videoconferencing in criminal proceedings for the production of investigative and judicial actions in an online format. The authors examined the legislative regulation, procedural and criminalistic features of videoconferencing using in the investigation and consideration of criminal cases. On the basis of dialectical and private scientific methods, the positive and negative sides of the introduction of the remote form of criminal proceedings are analyzed. The use of videoconferencing in court proceedings will reduce the time of consideration of cases by the courts and the costs of process participants. The full use of videoconferencing by courts is possible if there is a legislative regulation of the grounds and an appropriate procedure. Videoconferencing is advisable to use at all the stages of criminal proceedings. The relevance of the research topic is due to often use of videoconferencing by courts to consider cases, including in connection with the Covid-19 pandemic. According to the results of the research, the authors come to the conclusion about the positive assessment of videoconferencing introduction in criminal proceedings, because it allows to reduce court costs. At the same time, the introduction of videoconferencing in criminal proceedings should be carried out gradually and with caution, because of increased risk of violation of the rights and legitimate interests of criminal proceedings participants, as well as the commitment of society to direct interaction with the court.

Keywords: criminal proceedings, videoconferencing, court, investigation

1 Introduction

Digitalization is one of the key trends in the development of the entire world community, due to the current level of information technology development, as well as the
consequences of the COVID-19 pandemic [1]. Judicial and law enforcement agencies also cannot stand aside and are forced to transform the forms of its activities.

Without delving into the analysis of all possible directions of digitalization of the criminal process, we will focus only on one of it, namely, the use of videoconferencing (hereinafter – VC) in the implementation of criminal proceedings. Today, VC is successfully used by courts when interrogating suspects, accused, witnesses, experts and specialists [2-6]. At the same time, the issue of the prospects for optimizing the use of VC by courts and the permissibility of using VC to obtain testimony from various persons at the pre-trial stages of criminal proceedings remains relevant.

The ideas of the widespread introduction of the VC into the courts and investigative units, of course, at first glance seem quite progressive. However, before proceeding of its implementation, it is necessary to make sure that it complies with the principles of criminal procedure law of Russia, as well as to exclude the threat of the rights and legitimate interests’ violation of persons involved in criminal proceedings [7-10].

2 Methods

The research methodology includes a dialectical method of cognition used in conjunction with a systematic approach, as well as general scientific methods of induction and deduction, synthesis and analysis, logical and historical methods. Private scientific research methods such as experimental, formal-logical, logical-legal, comparative-legal, system-structural, statistical and sociological methods were used.

3 Results

The conducted research allows to draw the following conclusions:

1. A court session with the remote participation of one of the participants may be held without the involvement of a second court assisting in the identification of the interrogated person and in organizing his technical participation in the court session remotely. Identification of such a participant can be carried out through the unified authentication system of the identification portal “Public Services” by expanding the list of options available to citizens. It is also possible to develop special software for biometric identification by face and voice.

2. It is advisable to regulate the admissibility of remote presence in the court session of individual participants in criminal proceedings, whose participation personally is necessary, but objectively is impossible by the Code of Criminal Procedure of the Russian Federation. Participation in the court session by means of the VC is possible at the request of a person intending to take part in the court session in the specified form or at the court initiative. At the same time, it is important to legislate a ban on coercion to participate in a court hearing through the VC.

3. The right of the suspect, the accused, the defendant to apply for the presence of his defender not in the courtroom, but in the premises of the pre-trial detention center next to his client, when participating in the court session from the pre-trial detention center through the VC requires legislative consolidation.

4. The VC can be used not only for remote participation of individual participants in criminal proceedings in a court session, but also for conducting investigative actions, such as interrogation and face-to-face confrontation, at the stage of preliminary investigation, as well as for obtaining explanations during the pre-investigation verification of a statement and a report on a crime.
4 Discussion

The primary task of the judicial authorities when considering a case remotely is to identify the participants who joined the process through the VC. From the text of the draft Federal Law No. 1144921-7 “On Amendments to Certain Legislative Acts of the Russian Federation regarding the regulation of remote participation in court proceedings” (hereinafter referred to as the Bill), it follows that the legislator proposes for arbitration, civil and administrative proceedings to “establish the identity of the subject of legal proceedings with his participation in the court session through a videoconference system using information technology tools that can provide identification of a person without personal presence. In the Concept of informatization of the Supreme Court of the Russian Federation, approved by the order of the Chairman of the Supreme Court of the Russian Federation dated February 15, 2021 No. 9-P, it is rightly noted that “remote biometric authentication technologies facilitate the organization of remote court sessions with the participation of several or all participants in the trial without the need to involve a second court in order to assist in conducting the trial in the specified format, using videoconference technology. The introduction of biometric authentication technology of a participant in a court session by face and voice into judicial activity finds some support among specialists [11].

The provisions of the Bill are proposed to be introduced as additions to several articles of the Arbitration procedural code of the Russian Federation, the Civil procedural code of the Russian Federation, the code of Administrative Procedure of the Russian Federation. In our opinion, a similar provision can be reflected in the Chapters 35, 37 of the Code of Criminal Procedure of the Russian Federation regulating the general conditions of judicial proceedings and the procedure of a judicial investigation.

The norms of the Draft Law authorizing the court to take the subscription of the participants in the proceedings (in particular, an expert, witness, translator) who joined the court session through the VC, to explain to the subjects of the process the rights and obligations, as well as responsibility, issued by an electronic document certified with an enhanced qualified electronic signature, similar to the provisions of Article 474.1 of the Code of Criminal Procedure of the Russian Federation, may be included in the corresponding norm of Chapter 36 of the Code of Criminal Procedure of the Russian Federation.

The provisions of Article 474.1 of the Code of Criminal Procedure of the Russian Federation fix the right of persons to file procedural documents with appendices in electronic form to the court considering a criminal case. We believe that this right fully applies to persons participating in the court session by using the VC during the court session. Also, the criminal procedure law should contain a norm explaining that the interrogation of participants in criminal proceedings, in particular a specialist and an expert, as well as a witness is carried out by the court according to the general rules regulated by the criminal procedure legislation of Russia, with features that are reflected in the norm defining participation in a court session through a videoconference system.

The external attractiveness of using VC to ensure the participation of individual participants in a court session remotely, it should be recognized that communication using VC systems certainly limits the perception of what is happening on the other side of the screen. The effectiveness of the use of forensic interrogation techniques is significantly reduced. Often, the quality of communication leads to a delay in the sound and the transmitted image. As a result, it is possible to create situations in which individual participants in the proceedings will not be able to fully exercise their rights.

It is also difficult to talk about ensuring the right to defense for a suspect, accused, defendant who is in a pre-trial detention center and takes part in a court remotely, when his
defender is present in the courtroom and conducts legal advice with him through the VC [12-14]. We believe that the right of a suspect, accused, or defendant to petition for the personal presence of a defender during a court session next to him to provide qualified legal assistance in confidential communication requires legislative consolidation.

Despite the identified problems, the use of the VC by the courts shows positive results in terms of reducing the procedural time for consideration of cases and the possibility of obtaining testimony from persons who objectively cannot personally appear at the court session [5, 7, 15, 16]. It seems that video communication technologies can find its effective application during the pre-trial stages of the criminal process. Often, in the process of initiating a criminal case and preliminary investigation, it may be necessary to conduct an interrogation and / or face-to-face confrontation with the participation of persons located in another city, region and even another country.

At the same time, the issue of identification of the person being interrogated is also of paramount importance, which can be solved in two ways [11, 17-20]. The first option proceeds from the analogy of the use of VC by courts, that is, an identity card and the organization of video communication by the second court at the location of the interrogated person. In this case, such a certificate and the organization of video communication can be carried out by a specific investigative unit at the location of the interrogated person. Such a model of organizational and legal regulation of interrogation and face-to-face confrontation with the use of VC is already used in the criminal procedure legislation of some CIS countries (Ukraine since 2012, Kazakhstan since 2014, the Republic of Belarus since 2016). The draft law on making such amendments to the Criminal Procedure Code of the Russian Federation was developed in 2018, however, is still being finalized.

5 Conclusion

The process of digitalization of legal proceedings is inevitable and is conditioned by the development of technological capabilities of human society [21-23]. However, at the same time, on the one hand, it is necessary to fully support the positive impact of the introduction of digital technologies in legal proceedings, simplifying paperwork, improving the quality of investigation and resolution of criminal cases, and on the other hand, to approach the transition to “digital legal proceedings” very carefully, especially in criminal proceedings, due to the need for human participation in all stages of the criminal process, without exception, due to its specific, as well as the insufficient readiness of society at the current stage to abandon the traditional forms of interaction between a person and the judicial system.

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The draft law on making such amendments to the Criminal Procedure Code of the Russian countries (Ukraine since 2012, Kazakhstan since 2014, the Republic of Belarus since 2016). With the use of VC is already used in the criminal procedure legislation of some CIS carried out by a specific investigative unit at the location of the interrogated person. Such an organization of video communication by the second court at the location of the interrogated proceeds from the analogy of the use of VC by courts, that is, an identity card and the interrogation and/or face-to-face confrontation with the participation of persons located in paramount importance, which can be solved in two ways [11, 17-20]. The first option is...

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Unlawful acts of violence in airports: international and national criminalization

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Abstract. This research is dedicated to the analysis of international legal standards for regulation of liability for unlawful acts of violence in airports. The need to criminalize these acts is directly resulted from the basic international principle “pacta sunt servanda”. The authors believe the fulfillment of obligations taken by the Russian Federation is an indispensable condition of state functioning at the international arena. The methodological basis for the search is a number of common scientific and partial scientific methods of cognition, namely: analysis, synthesis, comparative, formally legal methods, etc. The article analyses regulatory prescriptions stipulated in the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation dated 24 February 1988, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971, as well as the Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation dated 10 September 2010. The authors made a conclusion that the most preferable method to bridge the existing gap due to no liability for unlawful acts of violence in airports in the national legislation will be inclusion of aggravating element «committed in the airports» in the Articles 205 and 361 of Russian Criminal Code.

Keywords: terrorism, violence, airport, civil aviation, aircraft

1 Introduction

Taking into account that one of the basic international principles is pacta sunt servanda, the authors believe that the fulfillment of obligations taken by the Russian Federation is an indispensable condition of state functioning at the international arena. The need to implement international standards into the national legislation is based on Article 15, Part 4 of the Constitution of the Russian Federation. The authors make a conclusion that criminalization of acts jeopardizing the safety of civil aviation in general and unlawful acts of violence in airports is directly resulted from the need to comply with obligations taken

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by our state under international treaties it is a party to. The authors’ proposals to change the wording of criminal provisions can be implemented legally to further improve the Russian Criminal Code (RCC).

2 Materials and methods

The research is intended to develop proposals, based on the systemic analysis of international normative acts, to improve the domestic criminal laws ensuring safety of civil aviation.

The subject of the research is social relations in the safety of transport infrastructure, namely, in civil aviation. A theoretical basis for the research is the materials of Russian and foreign scientists dedicated to criminal regulation of liability for civil aviation security violation and unlawful acts of violence in airports and its regulation in the statutes of international law.

During preparation of the article, the authors used the following methods: common scientific (analysis, synthesis, systemic and structural approaches, etc.) and partial scientific (formally legal, systemic structural, comparative, formally logical, etc.).

3 Results

During the recent years, the scale of terrorism has greatly expanded and become more sophisticated and destructive. Undoubtedly, one of its most dangerous manifestations is terroristic acts committed at the transport infrastructure, especially in civil aviation [1-3]. Political tensions during the cold war led to a dramatic growth of hijacking. Statistically, the peak of these crimes took place between 1968 and 1972 [4]. The doctrine of national [5, 6], foreign [7-10] and international [11-17] law admits that considering various aspects in this area seems very relevant. Terroristic acts are regular despite the adopted security measures. In 2016, the Ataturk airport in Turkey was attacked [18] as well as the Brussels airport [19]. To combat terrorist acts in this area, a number of international treaties have been concluded, such as the Convention on Offenses and Certain Other Acts Committed On Board Aircraft dated 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft dated 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Monte Carlo on 23 September 1971; the Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation dated 10 September 2010.

One of the types of such terroristic crimes is unlawful acts of violence in airports whose international legal criminalization is done by the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation dated 24 February 1988, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971 and literally reproduced in the Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation dated 10 September 2010. Initially, the international law expresses a position that the airport must be considered as the territory of the state, which means that any offenses within it shall be regulated by the national laws [20]. Therefore, the first international treaties did not consider the issues of security of these infrastructural facilities.

The object of these offenses just as any other terroristic crimes are relations in ensuring security of an indefinite number of people. The specifics of these crimes are that they do not just jeopardize safety of civil aviation but namely endanger such safety in airports serving international civil aviation. Additional objects are life, health and property relations.
From an objective point of view, the crimes are characterized as committed illegally and intentionally using any device, substance or weapon if such act threatens or may threaten security in the airport:

1) act of violence against a person in the airport serving international civil aviation that inflicts or may inflict serious damage to health or death;
2) destruction of serious damage of equipment and structures of the airport serving international civil aviation or non-operated aircraft at the airport or disrupting the airport operation.

The Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation dated 10 September 2010, Part 2, Article 1, contains a similar list of actions specifying that they are committed using any device, substance or weapon [21, 22].

Moreover, the Convention includes, as actus reus, the threat of committing such acts, attempt, organization or any complicity in committing them as well as concealment of persons who committed such crime [23].

According to Article 17 of the Model Criminal Code for CIS member states, criminal acts are, inter alia, capture of buildings, structures, communication systems, other utilities and their seizure if this is associated with the risk of their destruction or damage. This legal norm can be extended to airports serving international civil aviation.

An airport serving international civil aviation is referred to by internal norms as the place of committing crimes.

In terms of the structure of the actus reus, unlawful acts of violence in airports serving international civil aviation are crimes with material elements or elements of actual danger. Violence against a person in the airport serving international civil aviation will be completed after inflicting actual serious damage to health or causing death (material elements) or after there is a threat of these consequences (elements of actual danger).

Destruction or serious damage of equipment and structures of the airport serving international civil aviation or non-operated aircraft at the airport or disrupting the airport operation will be also completed, respectively, after the destruction, serious damage, or disruption of the airport operation, which characterizes the elements as being material.

At the same time, the crime committed in the form of seizure has formal elements and will be completed after committing this action.

The mens rea is characterized by an intent that can be direct or indirect. A crime committed in the form of seizure has a direct intent.

The Model Criminal Code for the CIS member states provides for a specific intention – to make the state, organization or citizen commit any action or abstain from committing it as a condition to release the seized object.

4 Discussion

Despite this detailed international legal stipulation of the analyzed crimes in the compulsory international norms signed and ratified in Russia, the Russian criminal laws provide no special provision suggesting liability for acts of violence in airports serving international civil aviation. In case of crimes listed in the above Protocol and Convention, they must be qualified depending on specific circumstances as terroristic acts and crimes against person or property. This legal gap is seen as a failure to fulfil international legal obligations taken by the state and is estimated as improper evaluation of social danger of committed acts.

5 Conclusion
This gap can be bridged in two ways: by including an independent norm into the Russian Criminal Code (RCC) defining liability for the acts listed in the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, or by acknowledging these crimes in airports as aggravating elements in Articles 205 and 361 RCC. The latter seems more preferable since criminalizing offenses committed in airports as independent provisions (in different article of Russian Criminal Code) will result in creation of almost a twin-crime with different constitutive element and lead to casuistic description of crimes in the Code, while adding aggravating element «committed in the airport» will, on the one hand, prevent unnecessary twin-norm, and on the other hand, reflect the specifics of such offenses and help to comply with the international obligations.

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Perspectives of using judicial legal examination in criminal process

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Abstract. Using special knowledge in criminal procedural proof is actively used in the law enforcement practice. Blanket norms in the Russian Criminal Code and high requirements to justification of resolutions led to attempts of using the results of legal examinations in proof for criminal cases. The research is intended to establish the legal nature of judicial legal examination, define legality of using it in terms of legal regulation and essence attributes peculiar to judicial examination. The research was carried out using formally logical, comparative legal, common science methods of analysis and synthesis. The results of the research are conclusions that an expert opinion obtained during judicial legal examination must be deemed unacceptable evidence due to the fact the subject of the judicial legal examination in criminal cases is legal evaluation of the defendant actions; these activities can be done only by subjects of jurisdiction activity; an expert does not carry out researches based on using special knowledge, which contradicts with the definition of judicial examination and violates the principles of judicial examination activities established by the law. Currently, there are no scientifically justified pre-requisites to create a method of research during legal examinations. Using legal knowledge is possible only as part of the opinion or evidence by the expert.

Keywords: criminal procedure, judicial examination, legal examination, special knowledge, subject of judicial examination

1 Introduction

It is reasonable to state that the modern criminal procedure becomes more and more examination-oriented, and there are few criminal cases that do not resort to experts or specialists [1, 2]. In this context, the issue of acceptability and practicality of using the results of judicial legal examination as evidence on the criminal procedure plays a special role.
Traditionally, the subject of judicial examination are actual circumstances while the legal evaluation is provided by the investigator and the court [3]. M.S. Strogovich wrote that examination must not study the issues that belong to the competence of the investigator and the court [4]. However, the investigative and judicial practice widely applies judicial examinations, which makes it necessary to discuss the issue of its legality.

This point was actively discussed after the Russian Criminal Procedural Code had been adopted. It was discussed by both procedural experts and specialists in criminal law. Two main positions were identified: some negate the use of judicial examination in the criminal procedure [5], while others believe that a traditional point of view in this matter does not comply with the objective need for using special legal knowledge in the criminal proceedings [6, 7]. We believe that neither position in this matter can be deemed as fully satisfactory. There is also an existing demand for using legal knowledge in proceedings, but the legality of using legal judicial examination is also very dubious. The legal judicial examination does not have those attributes that are mandatory for judicial examination. Legislation provides no unambiguous answer to this question. The subject of the legal judicial examination must be studied along with the fact whether this examination can be considered as research and whether legal knowledge can be considered as special. By answering these questions, we will try to justify an alternative solution to this issue from the viewpoint of using an expert opinion.

2 Materials and methods

The research is intended to establish the legal nature of judicial legal examination, define legality of using it in terms of legal regulation and essence attributes peculiar to judicial examination. To achieve this goal, the following objectives must be followed: specifying the subject of the legal judicial examination taking into account the existing judicial investigative practice and scientific approaches; evaluation of the legal study for compliance with the principles of judicial expert activity; evaluation of its methodology; comparing legal knowledge and special knowledge used in judicial expert activity.

The formally logical method is used to study characteristic attributes of the judicial legal examination in terms of the criminal procedural laws and its application practice.

The authors also use conventional common scientific methods [8] to analyze literature sources and empirical data.

3 Results

In general, there is no statutory regulation of the judicial legal examination. Order of the Ministry of Justice of Russia No. 237 dated December 12, 2012 (revised on May 17, 2021), Order of the Ministry of Internal Affairs of Russia No. 511 dated June 29, 2005 (revised on July 26, 2019) stipulating the list of judicial examinations done in examination institutions of the Ministry of Justice and the Ministry of Internal Affairs do not provide for legal examination. There is no adopted list of examination types in other law-enforcement authorities having own examination subdivisions.

Resolution of the Plenum of Supreme Court of the Russian Federation No. 28 dated December 12, 2010 (revised on June 29, 2021) On Legal Examination in Criminal Cases (Resolution No. 28) can be referred to as the only source that reflects the position of the Supreme Court towards the ability to provide legal evaluation to actions in the expert opinion. Clause of Resolution No. 28 contains clear indication on acknowledging the expert opinion containing legal evaluation of the action as unacceptable. The Plenum specifies that
placing before an expert legal issues related to evaluation of the action whose resolution falls under the exclusive competence of the investigation body, prosecutor, or court, as not falling under the competence of the expert, shall not be permitted.

It seems that this position of the Supreme Court must draw a line in the considered discussion but there is a disputable approach to interpretation of this restriction. Existing legal judicial examinations give no qualification evaluations from the view point of using material criminal law (guilt, motives, correctness of using Russian Criminal Code norms), but legal evaluations are formulated based on administrative, environmental, civil and other branches of law. There is a typical question on violations of road regulations in cases for transport crimes. At the first glance, there is no direct derogation from the prohibition given in the clarifications provided by the Plenum of the Supreme Court. However, this view point is rather frivolous and does not take into account specifics of blanket criminal norms.

Most norms in the existing criminal laws have blanket disposition, which means that crime attributes are specified and developed in the norms of other branches of law, so the conclusion on violation of norms the blanket disposition refers to is essentially the basis for qualifying an action as a crime. This conclusion undermines the legality of using legal judicial examination in criminal cases but this is not the only problem.

According to the legislative definition (Article 9, Federal Law No. 73-FZ dated May 31, 2001 On State Judicial Examination Activity in the Russian Federation) (Federal Law No. 73), judicial examination represents a study of the matters that require special knowledge in science, engineering, art, or craft. Based on the legislative definition, an expert opinion must contain: 1) study using special knowledge; 2) a method used by the expert. Requirements to reflecting the study results and using the study method are also stipulated by Clause 9, Part 1, Article 204 RF CPC; Clause 4.2 of the Order of the Ministry of Justice of the Russian Federation No. 346 dated December 20, 2012; Clauses 27 and 31 of the Order of the Ministry of Internal Affairs of the Russian Federation No. 511 dated June 29, 2005).

Legal examination fails to satisfy three main requirements: it contains no study; there is no special (non-legal) knowledge; and there is no method.

The requirement to objective, comprehensive and complete study using modern achievements of science and engineering is stipulated as the principle of state and non-state judicial examination activity (Articles 4; 8; 41 Federal Law No. 73). Article 8 of this Federal Law contains requirements to the contents of expert opinions that must be based on the provisions allowing to check the justification and accuracy of the conclusions based on common scientific and practical data.

In the judicial expertology, a study method is developed for each object of examination as a system of scientifically justified provisions to select and use methods, means and techniques for resolving expert tasks [9].

During judicial examinations, the study method must enlist not only common scientific methods used in the legal science but also clearly formulated algorithms of research operations and used methods necessary to check justification and accuracy of opinions, which guarantees the objectivity of examination results, and its use allows obtaining similar results by a different expert. Most developed are the qualification rules in criminal law but there is no unification here, though the issues of algorithmization of the qualification process is frequently raised [10]. Currently, there are no methods for legal judicial examination and the possibility of creating such methods is dubious.

Many countries establish a system of obstacles for using expert evidence in proof. Such obstacles include the subject for which expert evidence is given. It must belong to the acknowledged field of special knowledge [11-13]
An expert study means development of new knowledge and is a type of cognition activity, while the goal of the legal judicial examination is legal evaluation of actual data based on legislative acts [14], e.g., evaluation but not research activity. From an informative point of view, this evaluation is a stage of law enforcement where the actual circumstances are brought under a legal basis and a conclusion is made. By definition, the legal judicial examination cannot identify any actual circumstances [15]. Legal evaluation must be provided by subjects who are obliged to conduct criminal proceedings.

The results of such expert activity represent an act of professional or doctrinal interpretation of legal norms in a specific case and reflect only subjective opinion of the expert, which is tentative. Suggestions may not be a basis of the judgment of guilt, which again indicates to unacceptability of such evidence in a criminal case [16]. The results of legal examination may be recommendatory or informative for the subjects of jurisdiction activity.

Methodological recommendations developed by the Ministry of Justice for legal examination (Order of the Ministry of Justice of Russia No. 87 dated May 31, 2012) may not be used for judicial examination in criminal cases. This examination is used in lawmaking activities to evaluate a draft legal act for compliance with the Russian Constitution, legislation, international acts, and rules of legal engineering. A part of legal examination is anti-corruption examination [17] intended to identify corruptogenic factors. The subject of the legal examination are legislative acts and their drafts rather than actions of persons in terms of compliance or non-compliance with the legal requirements.

Neither legislative act stipulates legal knowledge used in law-enforcement legal activity as special knowledge. The procedural legal science actively discusses the possibility of using it [15, 16, 18], but we shall remind that legal examination by law includes studies based on special knowledge in science, engineering, art, or craft.

Special knowledge can be one possessed by the subjects of jurisdiction activity, and since all these subjects have higher legal education, it becomes obvious that knowledge in this field cannot be considered as special.

Studying a number of foreign publications [19-22] has also shown generality in understanding a judicial expert in Russia and abroad. A so-called witness expert takes part in the procedure when there are issues requiring special study such as medicine, psychiatry, etc. The issues of legal examination are not discussed in the foreign expertology.

4 Discussion

Despite the critical evaluation of the practice of using legal judicial examination, complication of the legal practice in criminal cases, investigations of economic, official, environmental and other crimes require using knowledge in the field of law.

The Criminal Procedural Code in force in the Russian Federation (Article 80) permits involving experts for these purposes, including development of respective opinions. Opinions do not require a study, which is reflected in Clause 1, Resolution of the Plenum of Supreme Court of the Russian Federation No. 28 (revised on June 28, 2021) and in the position of scientists for this issue [23] and represents a qualified opinion of the expert.

5 Conclusion

Based on the research, a conclusion can be made on the subject of legal judicial examination in criminal cases of the legal evaluation of defendant actions. The essence of this evaluation remains the same depending on whether it is formulated based on criminal
or other laws since this is an element of the crime qualification process, e.g., activity that only the subjects of jurisdiction activity are eligible to conduct.

Legal examination cannot be based on the objective, comprehensive and complete study allowing to check the justification and accuracy of the conclusions made, which violates the principles of judicial expert activity.

There are no methods for judicial legal examination, and creating such methods is problematic due to no unified and acknowledge theory of qualification in law. Most developed are the qualification rules in criminal law but there is no unification here, though the issues of algorithmization of the qualification process is frequently raised [11].

Legal knowledge cannot be considered as special for the parties conducting criminal proceedings.

Due to the above, an opinion of the judicial legal examination cannot be deemed as acceptable evidence for a criminal case.

Using legal knowledge for justice is possible only as part of the opinion or evidence by the expert.

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Fingerprint pattern of Richard Nixon as viewed by an expert in dermatoglyphics

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Abstract. The article is dedicated to the search of morphogenetic markers of delinquency in Richard Nixon, the 37th USA President. His fingerprint pattern was used as the object of the research. The primary method of research is dermatoglyphics based on detecting the types of ridge patterns of fingers and comparison of combinations of ridge pattern types of various fingers with reference patterns for people with delinquent and normal behavior (30 and 28 reference combinations, respectively). The research has found 5 informative combinations of ridge pattern types out of 58 tested combinations. They corresponded to reference combinations that are specific for persons with delinquent behavior. No combination has been found that would correspond to reference combinations typical of persons from the alternative group (conditional standard). The dermatoglyphics results correspond to the biography of Richard Nixon stating his unballasted character and aggressiveness in the childhood combined with lack of self-confidence, propensity to depression and paranoia, and a well-known reputation of one of the most scandalous presidents of the United States (Watergate scandal). The obtained data confirm that, in addition to social-psychological facts, the human behavior is defined by medical and biological factors responsible for formation of the higher nervous activity type, personal temperament, stress resistance and adaptive capabilities.

Keywords: delinquency, dermatoglyphic method, morphogenetic market, Richard Nixon

1 Introduction

Studying a criminal personality is an integral part of studying almost any crime. This allows for better understanding of the motives, explaining the direction of criminal actions, revealing some mechanisms of committing the crime. The Russian criminal science provides an idea of a criminal personality as a specific social type characterized by moral-psychological and social attributes [1]. Along with that, the Western European tradition provides a concept of criminal personality [2]. This concept has not become an integral

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system of knowledge in the Russian criminal science [3], but the number of publications in this field is constantly growing every year, which is related with new technological opportunities to study the higher nervous function based on molecular-genetic analysis and methods of brain imaging, which prove the dependency of human behavior on specifics of biological organization of personality [4, 5]. In its turn, this opens new opportunities for conventional methods of studying morphogenetic markers of people such as diagnostic dactylography [6-8] and criminalistic dermatoglyphics [6, 9].

An article [10] was published in 2021 that represents 58 combinations of ridge pattern types of fingers characteristic of people with delinquent and normal behavior. The authors state that the proposed reference combinations can serve samples for comparison with prescribed human attributes to test for involvement in a crime. If this is true, the proposed combinations of ridge patterns of fingers must become effective when used for independent materials. As an object of comparison available for most researchers, we have selected a fingerprint pattern of Richard Nixon, the 37th USA President, known for its unballasted character and aggressiveness that first manifested themselves in the childhood, lack of self-confidence during the presidency period, propensity to depression and paranoia during the last years of life [11-13].

The research is intended to check the efficiency of the method to define a risk of delinquent behavior using dermatoglyphic analysis under method [10] as shown through the fingerprint pattern of Richard Nixon.

2 Materials and methods

The primary method of research is dermatoglyphics based on detecting the types of ridge patterns of fingers and comparison of combinations of ridge pattern types of various fingers with reference patterns for people with delinquent and normal behavior (30 and 28 reference combinations, respectively [10]). According to the proposed method, the tested person must belong to the Caucasian race, since the dermatoglyphic phenotype depends on that general attribute of personality. Moreover, the tested person must have no heavy congenital diseases that would misrepresent his or her dermatoglyphic phenotype. According to biographical data, Richard Milhous Nixon was an ethnic Scotch, e.g., a representative of the Caucasian race (this is proved by his verbal description) and had no heavy congenital diseases (development abnormalities) [11-13]. The fingerprint pattern was taken from an open source [14]. The pattern was decoded using the rules given in [10], namely: 1) ridge pattern types of fingers were identified; 2) the number of ridges was counted in each pattern from delta to center (ridge count); 3) arch patterns (A) were assigned with code 1, radial loop (Lr) patterns with code 2, ulnar loop (Lu) patterns with ridge count up to 13 with code 3, ulnar loop (Lu) patterns with ridge count above 13 with code 4, helicine patterns (W) with code 5.

3 Results

The analysis of the fingerprint pattern of Richard Nixon found primary characteristics of ridge pattern of fingers. Pattern types: right hand – Lu with ridge count up to 13 (thumb), Lr (index finger), Lu with ridge count up to 13 (middle finger), W (ring finger) and Lu with ridge count up to 13 (little finger); left hand – Lu with ridge count up to 13 (thumb), W (index finger), Lu with ridge count above 13 (middle finger), W (ring finger) and Lu with ridge count up to 13 (little finger). Under the proposed method [10], conventional codes of patterns are 32353-35453 (sequential numbers of fingers, respectively).
Then relevant combinations were searched based on comparison of the tested formula with the samples (references or masks).

A) First stage – searching for combination in favor of the nominal standard N. The most relevant combination is 4xxx4 (R for right-hand fingers) – DK=-14. Dermatoglyphic phenotype of the tested person is 3xxx3, which does not correspond to a diagnostically relevant sample.

The next combination is x44x5x (L for left-hand fingers) – DK=-14. Dermatoglyphic phenotype of the tested person is x235x, which does not correspond to the sample.

Combination 54xxx (R) – the value of DK=-11. Dermatoglyphic phenotype of the tested person is 32xxx, which does not correspond to the sample.

The sequential comparative analysis is done in this manner up to the end of the list of diagnostically relevant combinations. According to our data, the tested person was found with neither combination that would be characteristic of persons from the control group (nominal standard).

B) Second stage – searching for relevant combinations in favor of belonging to the group of persons with predisposition to delinquent behavior (D). The most relevant combination is 3x42x (for 10 fingers) – DK=+11. For the dermatoglyphic phenotype of the tested person 32353-35453, the total number of patterns 5 was 3, which is more than 3, and the total number of patterns 3 was 5, which is more than 4. Therefore, there is complete correspondence to a diagnostically relevant sample.

The next combination is 2x24x/2x35x – DK=+11. However, the right-hand fingers of the tested person have pattern type 2, and left-hand fingers have no such pattern, which differs it from the sample.

Combination II+III=IV – the value of DK=+10. The sum of pattern types of the index and middle finger is 5 (2+3), which equals the code of middle finger pattern type that is 5.

Combination IV<V (L) – the value of DK=+10. This condition is not met in the tested person, since the code of middle finger pattern type (5) is not lower but higher than the little finger pattern code (3).

The sequential comparative analysis is done in this manner up to the end of the list of diagnostically relevant combinations. According to our data, the tested person has 3 other combinations that are characteristic of persons from the group of delinquent behavior (D): x235x (R) (+7), I-II=2 (L) (+7), I-IV≤2 (R) (+4). The combination of x235x (R) corresponds to the condition of II+III=IV (R) so only one is counted, which has the highest absolute value of the coefficient.

The final stage was an integral evaluation of the obtained results. It has been found that all detected diagnostically relevant combinations (4 in total) have positive DK values confirming high probability of referring Richard Nixon, the 37th US President, to the group of persons predisposed to delinquent behavior, and there is none that would classify him as the control group, while the sum of coefficients is +32, which corresponds to high probability of such judgment (P≥0.95).

4 Discussion

Our observations show that the dermatoglyphic phenotype is correlated with the types of higher nervous activity and it can be used as a basis for similar (typical) reactions to similar external irritants in persons with the same set of dermatoglyphic attributes. The authors of [7, 8] made similar conclusions in their studies. The nature of such correlation lies in the origin of ridge skin and nervous system from the common embryonic germ – ectoderm [10]. The path from detecting principles relevant for criminalistic practices until development of efficient diagnostic or prognostic method on their basis is very long. Primary difficulties are related with the fact that most informative attributive combinations
are rare while reaching the diagnostic (prognostic) threshold requires detection of at least 3-4 combinations, which is not always possible.

Deliberately, we do not analyze dubious capabilities of dermatoglyphic testing that are used by commercial organizations to determine the human character and issue recommendations to select the future vocation. Commercial psycho-diagnostics was criticized many times by the scientific community since, unlike the type of the higher nervous activity and type of the temperament, the character is an acquired, rather than inherited, property of personality [10].

5 Conclusion

The study of the fingerprint pattern of Richard Nixon, the 37th USA President, in order to check the method defining the risk of delinquent behavior using dermatoglyphic analysis under method [10] confirmed that the human behavior is determined not only by social-psychological factors but medical-biological principles responsible for forming the type of the human higher nervous activity and adaptive abilities. There are relatively easy observable morphogenetic (dermatoglyphic) markers that define these personal properties and help evaluating the risk of delinquency.

It should be noted that people are not born as criminals, but there are various types of higher nervous activity, various levels of adaptivity to external psycho-traumatic effects and, therefore, various types of social orientation and reactivity that instigate some people to crimes and prevent other people from crimes depending on the existing external conditions [15].

These principles can be considered in forensic psychiatric examinations as a source of additional information about the personality of examined persons.

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Forensic capabilities and criminal procedure requirements for electronic evidence

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Abstract. The article examines the problems of Russian criminal procedure evidence associated with the archaic procedural written documentary form of registration of evidentiary information, which actualizes the proposals to optimize the evidentiary activities in criminal proceedings during the digital transformation of society. The article's authors set out to substantiate the expediency and model the updating of the criminal procedural form concerning the order of evidence formation, in particular the procedural registration of the obtained evidentiary information and assessment of its admissibility. The contradictions between modern technological possibilities of registering evidentiary information and outdated written methods provided by the current criminal procedure law are demonstrated. A key role in the formation of electronic evidence is played by digital forensics, which is currently being actively developed in our country and beyond. The proposed updated procedure for the formation of evidence by modern, efficient electronic technologies in criminal proceedings updates the corpus of criminal procedure norms regulating outdated written proceedings; promoting procedural economy and the observance of reasonable time limits during the investigation and consideration of criminal cases; contributing to improving the information competence of relevant officials and optimization of their work activities in the modern information society.

Keywords: digital information, electronic evidence.

1 Introduction

Information has a significant evolutionary impact on criminal procedure, associated with the acquisition of forensically relevant information and evidence formation.

Ongoing information-technological changes in society and the state lead to new conditions of evidentiary activity, which creates contradictions between the classical model of proof and new ways of collecting and examining evidence. This contradiction is exacerbated by the lack of a definition of “electronic evidence” in the criminal procedural regulation, which forces participants in criminal proceedings to use the analogy of law to address gaps in legal regulation.

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The lack of a legal definition of electronic evidence in the CPC RF generates problems in implementing electronic document management in criminal proceedings [1]. Lagging on this issue leads to practical problems, expressed in the difficulty of those conducting criminal proceedings to describe complexly structured megabyte or gigabyte digital information from information-technology sources of reflecting traces of the crime in the existing protocols of procedural actions. These features are time-consuming. Existing employees are forced to formally rewrite the information already digitally recorded in the protocol. Not everyone can withstand this mode of work, so there is a large-scale shortage of personnel in the system of preliminary investigation bodies. Modern investigator (inquirer) is quite difficult to describe in accessible language evidentiary information from the digital infrastructure because only the integrity and visualization of such information provides an understanding of its essence and forensic value. The category of “electronic media”, which is also the object of close attention of proceduralists and criminalists [2, 3], does not adequately provide a solution to all practical difficulties in an era of rapid development of technical and forensic capabilities, information, and technological improvement of the criminal and procedural activity.

At present, there is no unambiguous internationally accepted definition of “electronic evidence”. However, there have been attempts in individual countries and at the international level to develop such a universal concept. The first efforts of a unified approach to defining electronic evidence at the international level can be seen in the 2001 Council of Europe Convention on Cybercrime, according to which it includes evidence in electronic form in connection with a criminal offense [4]. The Council of Europe’s Manual for Police Officers, Prosecutors, and Judges on Electronic Evidence defines it as “any information created, stored or transmitted in digital form that may subsequently be required to prove or disprove a fact challenged in legal proceedings” [5].

The Scientific Working Group on Digital Evidence (SWGDE) aims to bring together organizations whose main focus is to improve the use of digital evidence to ensure quality, improve communication consistency, and strengthen the collaboration among the forensic community [6]. This working group reveals the concept of digital evidence through the following attributes: a) it is always information; b) storage and transmission of this information are made in binary form; c) the information has the attribute of provability.

The International Organization on Digital Evidence (IOCE) has a similar approach to defining digital evidence. Its guide, “Digital Evidence: Standards and Principles”, additionally notes their acceptance by the court. This guide defines original digital evidence, duplicates, and copies. Original digital evidence is items with a physical substrate and data objects associated with those items in the seizure process. A complete and accurate digital reproduction of all data objects that are contained in the physical object that is the original should be recognized as a duplicate of the digital evidence, and under a copy of the digital evidence – an accurate reproduction of the information contained in the data objects, regardless of the physical element that should be recognized as the original. This paper presents proposed standards for the exchange of digital evidence between sovereign nations and international principles for the recovery of computer evidence, which were unanimously endorsed by delegates to the International Organization on Computer Evidence (IOCE) at the International Meeting on High Tech Crime and Conference on Forensics in October 1999 [7].

Individual countries have adopted various acts establishing normative features of electronic evidence. For example, the U.S. Department of Justice defines digital evidence as “information stored or transmitted in binary form that can be relied upon in court” [8]. The British Association of Police Chief Officers of England, Wales, and Northern Ireland (ACPO) defines information and evidential data stored or transmitted through a computer as electronic computer evidence [9]. Section 31.1 of the Canadian Evidence Act allows the

Russian legal scholars have different opinions on the legal regulation of electronic evidence. Thus, M.I. Voronin advocates the development of criteria and content of a new type of evidence – electronic evidence, peculiarities of its collection, verification, and evaluation [12], but does not offer a specific definition. Other authors, such as Yu.A. Lozhkin, after analyzing doctrinal approaches, conclude that it is inappropriate to introduce this definition, suggesting possible difficulties in applying the institute of “electronic evidence” in the long-established classical system of evidence, since they “may have signs of both material evidence and other documents” [13]. It seems that at present, there is a need to fix the concept of “electronic evidence” at the legislative level. It is advisable to develop and include the concept of “electronic evidence” in the CPC RF as the legal definition of this concept will be the basis for the introduction of electronic document management in the Russian criminal process, which will create prerequisites for making legal decisions in criminal cases with minimal cost. This is especially important for the preliminary investigation. Note that on the studied issue, there are many forensic recommendations for the use of information and technological devices to work with digital information [14, 15], which certainly indicates that there is a prepared base for the introduction (legitimization) of electronic document management in pre-trial criminal proceedings.

2 Materials and methods

The methodology is determined by advances in information technology, which impact the evidentiary process. Epistemological foundations and legislative requirements to the stages of evidence and the study of the experience of foreign countries’ criminal procedure systems, which already use electronic document management, are of key importance. To improve record-keeping and fulfill the tasks of criminal proceedings, information and technological sources and carriers of criminal-relevant, criminal-procedural, criminologically relevant, and other state-legal information are analyzed.

This aims to integrate fundamentally new possibilities of information and reference work for information transfer via information and telecommunication networks, processing in information systems, and developing an electronic environment of interdepartmental interaction between Russian preliminary investigation bodies and other participants of information interaction.

3 Results

Regular study of the activities of preliminary investigation communication with practitioners reveals the problems associated with the need to optimize proving in terms of fixing evidentiary information. Numerous theoretical studies testify to the same problems [16-18].

By its nature, electronic evidence is a complex multidisciplinary and multidimensional concept, including information-technological elements of integrity, immutability, and legal issues of admissibility and credibility. This multidimensionality makes it difficult to quickly incorporate it into Russian criminal procedural law.

In a criminal case, the investigator (inquirer) collects two types of information – analog and digital. We also distinguish between analog and digital (electronic) methods of registration of evidentiary information in proceedings. The analog method registers evidentiary information in written records of procedural actions. Electronic fixation
involves saving evidentiary information in a computer and (or) computer system. These attributes of electronic evidence must be taken into account when defining the concept of “electronic evidence” in criminal proceedings.

Based on the above, we propose understanding “electronic evidence” broadly as an electronic way of fixing any evidentiary information, i.e., the formation of evidence in electronic form. Then they can be saved in a computer and/or computer system to be transmitted later via the departmental computer network to the court as an electronic criminal case. It follows that the electronic evidence that we understand includes both information in electronic form and electronic way of registration and preservation of electronic data of traditional (analog) evidentiary information. Given the above, we propose an updated version of Part 1 of Article 74 of the CPC RF: “Evidence in a criminal case is any, including electronically recorded, legally significant information for a particular criminal case, based on which the court, prosecutor, investigator, interrogator in the manner prescribed by this Code, establish the presence or absence of circumstances to be proven in a criminal case, as well as other circumstances relevant to the criminal case”.

Electronically recorded information should be considered as electronic evidence, which presumes a fairly broad interpretation of the concept in question. We propose to recognize the expanded interpretation of electronic evidence, focusing on a promising model for the creation of electronic document management and, in the future – electronic justice. A narrow understanding will inevitably inhibit these processes [19].

Electronic means of recording evidentiary information will allow the investigator (inquirer) to draw up protocols of any procedural actions in electronic form and scan and save in pdf format all kinds of written documents to form an electronic criminal case. The consolidation of the concept of “electronic evidence” in the law of criminal procedure opens up the possibility for an official in a very short time to make appropriate decisions and perform actions related to the connection, separation of criminal cases, sending materials to the prosecutor or the court for judicial control with a minimum of effort and resources.

Today, electronic media are attached to the protocols. When compiling a protocol of a procedural action, the investigator formally rewrites the complex technological data already recorded and inevitably overlooks or distorts something important, that is, introduces his share of subjectivity. However, additional methods of preserving information in electronic form are far superior to the main protocol method of recording due to their properties of clarity, integrity, consistency, and objectivity.

Our proposed technologization of criminal procedural legislation with the introduction of the concept of electronic evidence inevitably increases the role of criminology as an applied science with a technical nature. Forensic activities are the technological basis of criminal procedural evidence. Forensics as applied science and practice is designed to provide technological assistance to find, record, and retrieve traces of the crime and examine them to extract evidentiary information.

Digital forensics, which specializes in digital evidence, is currently being developed abroad. The Framework for harmonizing forensic science in the examination of digital/multimedia evidence defines digital forensics as the study of digital evidence to support investigations and prosecutions, formally defined as the systematic and consistent examination of digital traces to address issues of authentication, identification, classification, reconstruction, and evaluation in a legal context [20].

Interpol’s comprehensive Digital Forensics Laboratory Manual states that digital forensics is a branch of forensics that focuses on identifying, obtaining, processing, analyzing, and reporting data stored on computers, digital devices, or other digital media [21].
We believe that the existing forensic capabilities allow us to apply the electronic method of fixing any evidentiary information, form and submit a criminal case to the court in electronic form. Our confidence is evidenced by more than twenty years of experience in law enforcement’s use of information technology, resulting in the acquisition of skills and skills in handling both computer tools and digital information. The acquired competencies of employees are based on modern training at universities, where information technology disciplines are studied. In addition, modern man is an active user of all kinds of computer devices and programs, which allows him to collect and copy information at the user level. The system of application of special knowledge and the participation of a specialist in the production of any procedural actions are provided to overcome any difficulties in working with electronic tools in criminal proceedings (Articles 58, 168 of the CPC RF). In current conditions, from a technological point of view, there are necessary opportunities to include digital information in work with traces of crime at all stages – detection, fixation, seizure, and preservation of electronic evidence in electronic files, their duplication, creation of electronic archives.

4 Discussion

Before the active digitalization of procedural activities, there were already advantages in using forensic technologies for the formation of evidence, the main of which were visualization and objectification of information about the facts. In addition, the use of technical and forensic means and methods speeds up the process of proof and increases its probative value. In this regard, A. R. Belkin, allocating verbal, graphic, and object forms of registration and transfer of evidentiary information, especially emphasizes the visual-image form [22].

The impact of digitalization on criminal procedural evidentiary activities has caused heated debate among scholars of procedure, who are conditionally divided into two camps: supporters of the introduction of an independent criminal procedural source of electronic evidence and opponents who argue that electronic information can be fixed in one of the traditional sources of evidence under Part 2 of Article 74 of the CPC RF.

For example, the former includes K.V. Obidin, motivated by the potential informativeness of electronic information [23]. I. I. Kartashov and O. A. Lesnikov argue that introducing a new group of “digital information” into the list of sources of evidence does not contradict the current CPC RF [24]. In the opposite opinion, A.M. Baranov states that digital evidence is only an illusion of the criminal process [25].

We proceed from the premise that modern approaches to regulation require a comprehensive understanding of the general definition of “evidence”, which includes information that is electronic information. With this approach, there is no need to single out electronic information as a particular type or source of evidence as this information will be included in the existing classical system of evidence, that is, as physical or written evidence.

5 Conclusion

Summing up, we can note the following.

1. The traditional model of forming criminal case files in written documentary form is outdated and does not meet the requirements of the modern information society.

2. The lack of the “electronic evidence” concept in the domestic legislation prevents the creation of effective modern conditions for preliminary investigation activities, which creates staffing problems.
3. “Electronic evidence” is information recorded electronically that is legally significant for a particular criminal case, based on which the court, prosecutor, investigator, interrogator in the manner prescribed by the CPC RF, establish the presence or absence of circumstances to be proven in the proceedings in a criminal case, as well as other circumstances relevant to the criminal case.

4. The legal certainty of the “electronic evidence” opens up the possibility for the person conducting the proceedings on the case to make appropriate decisions in a very short time and perform actions related to the connection, allocation of criminal cases, sending materials to the prosecutor or the court with a minimum of effort and resources.

5. The proposed changes to Part 1, Article 74 of the CPC RF would allow saving evidentiary information in the electronic materials of the criminal case for transmission via the departmental computer network to the court as an electronic criminal case.

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Criminal science in digital world

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Abstract. This article considers some issues of forming the necessary criminological component covering such area of activity as the digital space. The author underlines a notorious complexity of uncovering cyber-crimes, their latency and an important role of criminal science in their investigation. Moreover, the article highlights that implementing necessary criminological method in detecting the attributes of such offenses requires high-quality training of personnel specially oriented to the collection of evidence, mainly, in using digital media. The research is intended to find the essence purpose of the criminological component, primarily, in uncovering crimes committed in the digital space. When defining the research objectives and obtaining necessary results, the authors used such methods of analysis and social-legal modulation that allow for a more precise definition of attributes of the condition of modern criminal science and, therefore, giving a more complete characteristic taking into account the influence of this scientific component on recording of offenses in the area of using digital technologies. The research resulted in a conclusion that registration of cybercrimes must be extremal careful and, therefore must be accompanied by a competent procedural vision that must be formed by an official conducting investigation. In its turn, the criminalist must correctly extract information contained on the digital medium and transfer it to the above-mentioned persons to form a database of evidence for the criminal case. The novelty of this investigation is that the author not only analyzes errors made by officials when they obtain evidences of committed crimes in the digital area but also gives specific examples of how these errors can be avoided in practice.

Keywords: digital space, science of traces and clues, investigation, cyber-crimes, criminalistic methods

1 Introduction

Digitization represents a phenomenon of globalization that ceaselessly penetrates the human existence by actually transforming the new essence of the society and its primary institutes: culture, religion, education and many others. This phenomenon has swiftly been developed, which resulted in deformation of certain areas of human activity and caused revolutionary changes in understanding of the human essence by pertaining a different idea to its mental, cognitive, axiological and communicative abilities. The scientists justly note

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that the society has entered a new era – the era of digital industrialization – leaving the obsolete idea of human role in affect the social development in general [1].

Indeed, this opinion cannot be but concurred since the digital economy as a segment of productive use of digital technologies allows for overcoming a number of limitations characteristic of the today’s traditional economy. As a novelty, it has its own advantages: time savings in any types of activities using various equipment, fast access to the required information, high speed of mathematical calculations using computers, fast exchange of confidential or other information. Production scales at production facilities are growing because management and production are usually done by machines which results in savings of time, material and labor resources, which is one of the most relevant tasks of digital and traditional economy. Data about all employees and activity planning are also stored in the database, which facilitates access to them. The development of digital economy simplifies the workflow management of personnel and predicting expenses for them.

Due to combination of everything achieved in the society, there is new task to analyze those relations that became possible due to industrial development and then efficiently settle the developing areas of relations taking into account possible actions and consequences. As most researchers note, it was clear at the early stage of forming a new industrial trend that this would entail serious social transformations. Therefore, it will be required to expand the boundaries of legal control so that the acquired technologies would not become a new panacea in protection of human rights and freedoms [2].

Despite the fact that the society and representatives of the scientific world fully comprehended the consequences of such development, some regulatory provisions started to be change and improve after the problem occurred. Statistical reporting showed that the damage inflicted by swindlers during the last ten years by using modern technologies in the banking sector, insurance and credit card operations is one of the highest over the entire history of swindling related with digital technologies and has reached unprecedented extent as estimated by various organizations [3]. In our country, the situation in this area is becoming worse each year [4].

It seems that the concept of computer crimes covers any socially dangerous actions that may employ digital technologies or artificial intellect as well as various informational technologies and capabilities arising in association with them [5]. An example can be well-known crimes (hacker virus crimes, service denial attacks, Internet swindling, online threats, distribution of children pornography, compromising confidential information in the Internet) and brand-new types of actions not reflected in the criminal law (illegal actions by using face substitution technologies, turnaround of cash equivalents, etc.). Therefore, the scientists think it would be correct to distinguish criminality in the field of digital technologies as an individual group based on the fact that adaptation of the Special Part the Russian Criminal Code (RCC) [6] to the conditions of informational society by constructing virtual copies, digital twins, and traditional legal prohibitions seems impossible in modern conditions [7].

Moreover, it should be noted that a high number of Russian and foreign researches (including theses) are dedicated to the studies of digital space properties and its effects on social basis and activity of people [8–11]. These researches failed to develop a correct vision of specifics of using the criminal science in this area namely when the sources of digital format were considered as carriers of evidence. In its turn, the criminal science frequently uses databases accumulating evidence for criminal cases. Many processes are algorithmized and automated. Digital technologies are actively used in teaching criminal disciplines when training law-enforcement personnel and judges.

### 2 Materials and methods
By defining the criminalistic method of studying digital space properties as the main objective and goal of this research, it is required, first of all, to describe the modern condition and significance of the criminal science in investigation of criminal cases. The applicability of criminal provisions represents an area where the criminalistic component is disclosed more or less widely. Primary issues addressed by this scientific field are well known but today criminalistic experts highlight a number of problems. This research is intended to consider these issues in more details and, based on the results, present certain proposals to eliminate any existing drawbacks. Consistent diagnostics of such a plan requires analyzing the overall condition of the criminogenic situation in the area of using digital technologies thereby revealing its weaknesses and defining the insufficiency of legislator attention to this issue. To determine specifics of these drawbacks, taking into account various life situations, it would be correct to use the method of social modulation that allows for a more precise definition of the deterministic component of committed offenses. Attention must be paid to the fact that modulation of situations should be supported by statistical data or other information about the research object since the method of social modulation depends on the objective component. Existing data obtained during other scientific researches should be also used as aiding materials.

3 Results

Exposure of a crime is a process intended to collect data and detect traces of its committing. The latter has always played the key role in criminal procedure not least because the traces have been and remain the primary source of evidence and investigative formation. Moreover, it is the successful (timely) detection, recording and study of crime traces that allows for a high-quality resolution of the investigation and confidence that the selected investigation line was correct.

The criminal science as a scientific area of the criminal field sets the goals of improving the quality and speed of trace collection by simultaneously differentiating the obtained materials by groups and types [12]. This gives a basis for correct identification of specific object parameters and helps solving non-identification (diagnostic) tasks, which enables finding such information about the committed crime as the time, number of participants (accomplices), method of implementing the malicious intent as well as other information characterizing the objective aspect of the criminal activity (bullet direction, vehicle color, type of weapon, etc.).

But various authors in the field of the criminal science and criminology frequently underline that at the current stage of criminalistic idea development recording traces for some types of crimes may not fit the idea that they must be recorded. First of all, special attention in this issue is paid to the digital space where evidence is not always collected to get material objects.

In particular, the author of the thesis Informational-Technological Support of Criminalistic Activity in Investigation of IT Crimes, A.A. Rudykh states that the criminalistic component defining the collection of data upon crimes committed in the digital space does not fully fit the understanding of its essence, and, therefore, the approach considering informational technologies in the criminal science from the point of view of the criminalistic method will soon be abandoned. In this connection, there is a need to provide modern criminalistic format with advanced digital technologies whose subject of use will be the investigator or a criminalist [13].

In fact, other experts in the criminal science support this position. For example, A.N. Kolycheva studies the specifics of recording traces of crime committed by using the Internet and claims that adopting new technologies in the criminalistic method is not enough to achieve high-quality collection of crime traces in the worldwide web, but
respective experts in this area must be also involved (trained). This is supported by recent transformations of the criminal aspect in terms of defining the socially dangerous component in the digital field and by constant changes in technologies as well as complexity and specificity of recoding traces in the net having evidentiary significance to solve the criminal case [14].

Taking into account these positions in defining the areas for development of digital criminal science, it will logical to use the idea of what crimes committed in the digital field are. In the scientific doctrine, such crimes include actions committed using computer information. In particular, in the criminal law their disposition component is reflected in Part 28 CCR that includes both crimes committed using computer information (Articles 272, 273 CCR) and those committed by technical impact on the digital field (Article 274 CCR). This means that the object of such crimes can be both digital media and the information itself located or recorded on the media of such kind.

Therefore, the carriers of traces of committed crimes in the digital field can be various technical devices such as:
- computer owned by the criminal or the victim;
- equipment for video and photo shooting (such as mobile phone camera);
- so called smart devices (TV, refrigerator or even vacuum cleaner);
- Internet-content (resources);
- various databases (airports, payment systems, etc.);
- recording data of vehicle traffic (onboard recorders, engine control units and airbag control units), etc.

All these sources of informational impact on the human will and consciousness as well as control over various processes are closely related with digital data storage.

Moreover, the primary method of committing cyber-crimes is contactless intervention into the informational space of another person thereby damaging his/her interests or correcting the processes executed by that person using digital technologies.

It should be borne in mind that this method significantly reduces investigation capabilities in identification of traces and clues but increases the number of the traces (digital) that represent a number of actions intended to deform the informational-telecommunication environment. The practice shows that a trace of such type can be left by a natural person and by an entity [15].

Therefore, several types of digital traces can be identified:
- passive: information that was collected about the object with permission (in some cases, this can be history of visiting specific web-sites);
- active: a trace based on intentional visits of specific resources (registration with specific content, forum or chat). In this case, the criminalist may define the sequence and nature of committing specific actions.

Studying digital traces, capabilities of using them and crime investigation is an important step in developing a particular method to be implemented for practical use in law-enforcement activity.

Recording of such traces is an exclusive right of an official authorized to commit specific procedural actions and make certain procedural decision. Therefore, it will be reasonable to consider the investigator as the expert, rather than the hacker, who can make necessary extraction of data based on the order and transmit these data to become a person involved in their processing. This perspective might correct the compliance of some legal provisions defining the procedure for storage, collection, and transmission of secret information. It means that in this case, the investigators will not be able to guarantee that they can ensure protection and compliance of one of the primary principles of criminal proceedings – the secrecy of investigation Moreover, an intervention of such type often
leads to destruction of evidence thereby inflicting an irrevocable damage to the investigators and other persons suffered from crimes.

On the other hand, the practice shows that collecting data about crimes often involves violation of constitutional rights of citizens. This is why the recording of traces of cyber-crimes must be extremely careful and, therefore, accompanied by a competent procedural vision. Having this in mind, the investigator or another investigating official must have sufficient knowledge in functioning of communicative-informational technologies. This knowledge will help finding the storage of possible data and make their extraction safe, timely and legal since the area of digital technologies is one of the most private in terms of legal protection. Therefore, the task of the criminalist is to develop a method for correct extraction of such information, record and transmit it to those persons who will be able to use it as evidence in the criminal case.

4 Discussion

The above examples indicate that the main method of making cybercrimes is so called contactless intervention. The task of criminalists in this issue is to develop a number of measures intended to facilitate detection of such intervention and its further recording. In its turn, the primary issue in this case is poor training of criminalists and officials directly involved in criminal proceedings, first of all, in detection of traces of unauthorized intervention. In particular, the analysis showed that criminalists learned to define attributes of such intervention after the digital space is subject to the necessary control by law-enforcement authorities while the main task in detecting such traces is prevention of illegal activity in using digital media. It seems worth discussing the idea of correct procedural recording of such traces. For example, the authors of other researches cover only the theoretical aspect where the primary argument used for conclusions is various presumptions and prejudices. Mistakes made when collecting necessary information are almost not studied and there is no necessary analysis of legal practice in this issue. Meanwhile, the efficient use of the methodological content in legal proceedings is the practice of using specific methods to record the necessary trace as accurately as possible and, which is also important, in a legal manner.

5 Conclusion

The objectives set out by the research are partially accomplished. This is because the digital space (and its properties) is not fully studied at this stage of development. This is related to constant development of technologies and their ubiquitous (uncontrolled) use by citizens. In its turn, the criminal science can cover those areas of human activities that already have the required experimental potential. Recording traces of cyber-crimes is a process that must be supported by the necessary imperative minimum based on correct ideas of digital medium properties and an ability to decode the algorithm of digital data contained in such medium. Despite the fact that new formats of criminal prosecution and necessary methods of evidence collection in case of cyber-crimes appear every day in the modern criminal science, the method for collecting such traces is not yet perfect. Moreover, special knowledge is required for correct and timely detection of traces of such crimes. In this connection, it would be reasonable to make substantial corrections in those areas that cover training of criminalists taking into account specific professional orientation in investigation of digital crimes.

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Import of food: issues of delict science and expert evaluation

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Abstract. This research analyzes the specifics of statutory regulation of food import to Russia. The paper is intended to overview the problems of poorly studied phenomena in the theory of administrative law, namely, the issues of statutory regulation of food import into the Russian Federation. The tasks are as follows: analysis of legal adoption of compulsory requirements to food products imported into Russia; studying prohibitions and restrictions established by the government; analysis of delict science problems when violating prohibitions and restrictions and using expert evaluation in administrative offense proceedings. Implementing prohibitions and restrictions when food products cross the customs border is related with detection and prevention of administrative offenses. The legislator and law enforcer face the problem of setting out compulsory requirements, justified implementation of prohibitions and restrictions, efficient mechanisms of influencing offenders. The authors are supported by judicial practice and analyze the specifics of using individual types of evidence including expert examinations in administrative offense proceedings in the customs field. The authors conclude that vagueness of statutory regulation of food import into Russia makes the object of administrative offense subjective.

Keywords: administrative law, food products, customs relations, corpus delicti, administrative liability, expert examination, law enforcement

1 Introduction

The need to provide food products for the Russian population suggests civil turnaround of food. Both internal products made in Russia and products imported from other countries are subject to such turnaround. Part 1, Article 8 of the Constitution of the Russian Federation sets out a legal market basis and a prohibition to place any obstacles for goods circulation in Russia where the unified economic space and free goods circulation are adopted. Using the structure of the legal space of V.V. Lazarev [1], the following characteristics of food turnaround can be distinguished: 1) delineation by Russian borders or agreements of national states; 2) unity of statutory regulation.
Multitude of social ties implemented when crossing customs borders by food products can show both legal behavior of participants and deviations from such behavior. States take measures to reduce illegal actions of participants of customs relations associated with food turnaround. The researchers of these issues are K.I. Kostik, N.E. Bayeva, S.V. Khalipov, etc. Illegal behavior of participants in circulation of food products is governed by the Administrative Offenses Code and the specifics of the offense object require using special knowledge, which is analyzed in the papers by A.M. Zinin, E.R. Rossinskaya et al.

2 Methods

As any other legal study, the research of food products imported to Russia requires modern methods to obtain high-quality results. This paper is intended to analyze the legislation and judicial practice in food products import into the state. The formulated goal suggests the following issues to be addressed: identification of specifics in setting prohibitions and restrictions when importing food in Russia; link between statutory regulation and elements of administrative offenses in the customs field; studies of theoretical concepts. Taking into account the existing practical relations in crossing customs borders by products, it is impossible to complete research without employing empirical materials. The systemic analysis will help considering the import of food products into Russia and administrative liability when holding liable as components of the system suggesting a specific set of elements and resources for its functioning. Heuristic and axiological methods will enable for logical and consistent scientific research, and the method of comparative legal science will help using foreign experience in the considered relations.

3 Results

According to Article 2, Clause 1, Sub-Clause 3 of the Customs Code of the Eurasian Economic Union, import of goods to the customs area of the Union means performance of the acts which are related to crossing of the customs border of the Union and as a result of which goods are transported to the customs territory of the Union by any means, including their shipment as international postal items, the use of pipeline transportation and electric power transmission lines, until such goods are released by customs authorities.

As part of food products turnaround, administrative offenses occurring when products cross the customs border are governed by Chapter 16 of the Administrative Offenses Code of the Russian Federation. As applicable to food products, the elements of administrative offense governed by Article 16.3 of the Administrative Offenses Code of the Russian Federation can be characterized as follows. An administrative offense is a failure to comply with prohibitions and restrictions for import of products to the customs area of the EurAsEC or Russia and export from such area.

Crossing the customs border makes the subject elements of the offense specific. This is because foreign natural persons and entities can act as the subject. In this manner, I.A. Maslov makes a conclusion of procedural capabilities of executive authorities when holding foreign entities liable [2]. Moreover, a specific feature of the subject composition is participation of intermediaries providing customs services in such relations. Their status is studied by K.I. Kostik [3].

An object of this administrative offense is the procedure and conditions of products crossing the customs border.

An objective aspect manifests itself in violation of prohibitions and restrictions that can be set out by acts of various level: international agreements of EurAsEC members; regulatory acts of the Russian Federation.
Due to specifics of the considered legal relation, customs officers have no specific knowledge in compliance with mandatory requirements to food products. In the practice of offense detection, this requires the use of additional means in such proceedings, including expert examination. Its use as evidence in administrative offense cases is provided for by Article 26.4 of the Administrative Offenses Code of the Russian Federation. Using expert examination is justified by judicial practice and theoretical researches in the field of administrative and criminal science [4–6].

Prohibitions and restrictions are a part of the legal status of crossing (import-export) the customs border and are set out by Article 7 of the EAEU Customs Code.

Food, alcohol, grain and tobacco products are included in the Unified List of Products covered by mandatory requirements within the Union. The legislator was not very consistent in using the terms in the represented regulatory acts. According to Article 52, Clause 1, Para. 4 of the Agreement, such products are covered by “technical regulations of the Union of national mandatory requirements”, and the Unified List states “mandatory requirements within the Customs Union”, and only the contexts shows that they belong to technical regulations.

According to Article 7, Clause 2 of the EAEU Customs Code, the measures of technical regulation must be confirmed in cases and in the manner as defined by the Commission or the laws of the member states in compliance with the Union Agreement. Article 52 of the Eurasian Economic Union Agreement sets out adoption of technical regulations at the Union level in order to protect life and health of human and animals, environment, and prevention of actions misleading consumers. Food, alcohol, grain and tobacco products are included in the Unified List of Products covered by mandatory requirements within the Union (Resolution of the Customs Union Commission No. 526 dated January 28, 2011 (revised on February 21, 2020) On Unified List of Products Covered by Mandatory Requirements within the Customs Union). The legislator was not very consistent in using the terms in the represented regulatory acts. According to Article 52, Clause 1, Para. 4 of the Agreement, such products are covered by “technical regulations of the Union of national mandatory requirements”, and the Unified List states “mandatory requirements within the Customs Union”, and only the contexts shows that they belong to technical regulations.

Food products released for circulation within the Union must be safe (Article 53 of the Agreement). According to Article 7, Clause 3 of the Eurasian Economic Union Agreement, sanitary, veterinary and quarantine phytosanitary measures and radiation requirements must be followed.

The adopted unified sanitary, epidemiological and hygienic requirements include general requirements to marking of food products, hygienic requirements of safety and nutrition value, requirements to storage and transportation. Hygienic requirements include organoleptic requirements (for example, their invariability), veterinary requirements (prohibition of using veterinary drugs not admitted for use; residual amounts of animal growth stimulators), phytosanitary requirements (prohibition of using prohibited pesticides), chemical pollutants, toxic elements.

Veterinary and sanitary measures are applied to the imported products subject to veterinary surveillance. In accordance with the unified list of products subject to veterinary surveillance, such products include: live cattle and poultry; fresh, chilled, frozen meat; salty, dried, smoked meat products; meat meal; live, fresh, chilled fish and seafood. Veterinary sanitary expert evaluation sets out compliance of the above food products with EAEU technical regulations (Decree of the Third Cassation Court of Common Jurisdiction No. 16-185/2021(16-4998/2020) dated February 26, 2021, Decree of the Third Cassation Court of Common Jurisdiction No. 16-2223/2021 dated September 3, 2021).

Compliance of radiation requirements is also checked by expert examination within the proceedings. The examination is intended to find compliance of the imported products with
the requirements set out by sanitary rules (Decree of the Federal Anti-Monopoly Service in the North-Caucasus District dated September 27, 2010 under case No. A32-53859/2009-66/958-96AZh).

Prohibitions and restrictions can be also set by the Russian legislation. They can be common or specific when they are adopted in association to a group of commodities or states whereof they are imported. As a general prohibition, a rule under Article 21, Clause, 29-FZ dated January 2, 2000, can be considered that prohibits import of low-quality, dangerous and falsified food products to the Russian Federation. Comparison of products by quality and falsification can be done as part of the commodity examination that is appointed in the proceedings (Decree of the Second Cassation Court of Common Jurisdiction dated September 9, 2020 under case N 16-6901/2020, 16-6892/2020).

Expert examination is also used in violation of special prohibitions and holding an entity liable. For example, the expert examination was used to detect import of prohibited food products according to the Presidential Decree No. 583 dated November 28, 2015 On Ensuring National Security of the Russian Federation and Protection of Russian Citizens Against Criminal and Other Illegal Actions and On Using Special Economic Measures Towards the Turkish Republic (Decree of the Arbitration Court of the North-Caucasian District No. F08-12904/2019 dated February 6, 2020 under case N A15-2651/2017).

4 Discussion

The analysis of judicial practice related with holding liable for violation of prohibitions and restrictions when importing food products to Russia results in a conclusion that the expert examination appointed by customs authorities is frequently appealed by parties to administrative offense proceedings. Here we speak of the right for appeal [7], but the arbitration judicial practice is based on the number of constitutional and procedural norms that enable appealing of intermediate procedural acts (Overview of judicial practice, Appendix to the Letter of the Federal Customs Service of Russia dated September 24, 2004 N 01-06/1438).

Theoretical papers sometimes claim the need to develop unified global prohibitions and restrictions which would allow persons transporting food products to use unified rules and become offender less frequently [8]. Such researchers as N.E. Buvayeva and A.N. Shashkina develop the idea of using stimulation measures for participants of customs relations. This can also reduce the number of administrative offenses [9]. Provisional measures are also analyzed within proceedings of customs cases [10]. We should also note the ratio between criminal and administrative liability with shared elements of customs offenses [11].

Foreign researchers also pay attention to offenses related with food products and their import. J. Joenperä, T. Koskela analyze offenses in food turnaround in Finland proposing to expand training of inspectors [12]. Similar researches have been done in Canada [13]. K. Kettunen, M. Nevas, J. Lundén consider specifics of administrative enforcement actions in control over food products. Their use is considered through improvement of efficiency of control activities [1].

5 Conclusion

The results of the analysis give the following conclusions:

First of all, prohibitions and restrictions for import of food products to the Russian Federation are set out by legal acts of various levels, both supernational and national.
Secondly, the legislator inconsistency when using the terms setting prohibitions and restrictions makes the rules of administrative liability vague and ambiguous in practical use.

Thirdly, violation of such prohibitions and restrictions is an administrative offense set out by the Administrative Offenses Code of the Russian Federation. Due to the blanket nature of the legal norm disposition, changing prohibitions and restrictions will affect the nature of the administrative offense.

Fourthly, proceedings for administrative offenses take into account specifics of the object of the offense, which leads to using expert examination of food products as evidence.

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Commonly known facts from the Internet during forensic evidence

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Abstract. The article deals with using the Internet information data by the courts in establishing commonly known facts that are not subject to proof in court. Russian judicial doctrine and court practice do not define the criteria and rules for using online sources, while the number of references by judges to information on the Internet is steadily increasing. At the same time, Internet resources are not always reliable and may contain unreliable information. In the article, the author refers to the experience of U.S. courts using information from the Internet in establishing judicial notice of publicly known facts the opinion and position of researchers in this area. The study is based on comparing doctrinal and practical approaches positive and negative assessments of the use of Internet data as circumstances that do not require judicial proof. Noting the inevitability of the penetration of online technologies in the judicial process, as well as, to a greater extent, the positive experience of the use of publicly available electronic information by courts to establish publicly known facts, the author offers one solution to the problem of “reliable source” of information on the Internet.

Keywords: litigation, commonly known facts, judicial notice, evidence, federal rules of evidence

1 Introduction

The proof system in various branches of Russian procedural law contains provisions on circumstances that are not subject to proof. Among such circumstances are “commonly known” circumstances, as stipulated, for example, by Part 1 of Article 61 of the Civil Procedure Code and Part 1 of Article 69 of the Arbitration Procedure Code of the Russian Federation.

Traditionally, commonly known circumstances are defined as facts that are not required to challenge. So, E.V. Vaskovski noted that commonly known facts are “those that should be known in a given area to every reasonable and experienced person, including litigants and judges. They do not need to be proved, because denying them is either directly ridiculous or is caused by a dishonest desire to delay the process” [1].

As applied to commonly known facts, as indicated by Rule 201 of the U.S. Federal Rules of Evidence (hereinafter “FRE”), the famous American jurist John Henry Wigmore wrote that the purpose of the rule is to save time, labor, and money to secure and present

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evidence on matters not normally subject to challenge and not in fact challenged in good faith [2]. The U.S. law of evidence allows a court to establish judicial notice of a fact if it is common notice within the court’s jurisdiction, and such a fact would not need to be proven by the parties to the dispute. Noting a specific identity of the provisions of the Russian procedural law and the FRE on the waiver of proof of commonly known facts, for the purposes of this article, the author will attempt to study the general phenomenon of this institution.

Judicial notice applies to undisputed facts, such as the number of days in a week, sunrise and sunset, or basic geography. There can be no objection to the truth of these facts, and calling a witness to testify, for example, that the sun rises in the east, would be a waste of the court’s time [3]. Currently, the courts take judicial notice of such a commonly known fact as the Covid-19 pandemic [4].

Sometimes commonly known facts can also include legal norms. For example, the court has the right to establish judicial notice of the content of a particular foreign law if it is common notice [5]. Another example is Article 21 of the Charter of the International Military Tribunal (Nuremberg), according to which the tribunal can establish judicial notice of the reports and conclusions of other tribunals of any United Nations [6].

At the present stage of the development of social relations, information technology has a significant impact on the judicial process, including proof. In addressing the topic of this article, the author raises the issue of the correlation of information obtained from Internet sources with the facts that do not require proof, namely – with the commonly known circumstances. An analysis of court practice shows that courts increasingly take information obtained on various Internet sites as common notice. Thus, the arbitration court of appeal acknowledged the defendant’s use of the land, referring to the information from the Internet service Yandex.Maps [7]. In another case, the arbitration court of cassation instance found the circumstances of preparation and examination of design documentation for the construction project to be common notice since the relevant information was posted in the public electronic network [8].

Courts and litigants’ regular use of Internet resources is obvious and can hardly be limited or fully regulated. On the contrary, the emergence of new sources of information, available anywhere and to anyone, blurs the line between facts that are common notice within a certain jurisdiction and facts that can be accurately and easily obtained from reliable sources [9]. At the same time, it should be noted that the Russian legal doctrine and judicial practice have not yet developed an approach to which specific Internet resources are sufficiently reliable. The court can take the information contained on them as not requiring proof. The issues raised several years ago remain relevant. Does public accessibility imply public notice? Can the information posted on the Internet be regarded as common notice in the procedural sense? [10].

2 Methods

In general, the study is based on a comparison of doctrinal and practical approaches, namely positive and negative assessments of the use of Internet data as circumstances that do not require proof in court.

3 Results

Based on the analysis of the data obtained, the author concluded that the problem of applying FRE Rule 201 to the facts established with the help of information from the Internet is sufficiently illuminated and elaborated. On the other hand, researchers of the problem often come to opposite conclusions about the role of information resources in the process of proof, noting either positive or sharply negative sides. The U.S. judiciary roughly equally takes and rejects judicial notice of facts obtained from online sources. At the same time, arbitration courts in Russia recognize data obtained from the network as common notice in the vast majority of cases.

The solution to the problems of interaction between the Internet and the court in the process of proof, perhaps, lies in the plane of legislative regulation. However, we can already offer one way for the court to assess the reliability of an online resource and the reliability of the information it contains. This method was previously proposed to check the veracity of scientific facts – the judge can clarify whether the source has undergone expert evaluation and learn about the frequency of its errors [3]. Equally, when referring to a resource on the Internet to establish a fact not subject to proof, the court could look at the number of errors in the information contained on this site. Based on these data, the court can make an appropriate procedural decision regarding the fact being established.

4 Discussion

Under FRE Rule 201, a fact admitted in judicial cognizance must be sufficiently undisputed in the sense that it is either generally known within the court’s territorial jurisdiction or can be accurately and easily determined by reference to sources whose accuracy is not reasonably doubtful [11]. Consequently, both the publicity of the fact and the source’s reliability confirm it is important for judicial notice. For example, a judge may not know a particular fact, but if there is an undisputed source, these rules of evidence allow the use of judicial notice of such a fact [9]. Before the advent of the Internet, a judge could obtain confirmation of a significant fact from a printed publication, such as a dictionary, almanac, encyclopedia, or cartographic material, or not waste time and rely on his common sense. Today, however, a judge needs only a few minutes to confirm his intuition by conducting a routine Internet search [12]. At this point, the main question arises, whether the information from online sources are so reliable and true that they can affect the outcome of the litigation as facts, not subject to proof and, accordingly, refutation?

As already noted, the idea of the reliability of information from the Internet has supporters and opponents among scholars and judges. For this reason, uncertainty may well arise in judicial practice: what one court finds insufficient grounds for judicial notice may be simultaneously established in another court [3]. Some courts establish facts from web sources without discussing or disclosing the reasons, showing a liberal willingness to take websites as those facts without an apparent distrust of the online environment itself. Others categorically reject facts appearing in an Internet source as unreliable, regardless of their evidence [12].

Let us first consider negative opinions, which should be taken with some understanding, since the use of information system resources in a trial is significantly inferior in duration to traditional sources, such as written evidence and testimony.
One such view is the idea that the modern information environment is unstable. Information on the Internet changes rapidly and is easier to manipulate than physical sources. For example, it is unlikely that an interested party could write and publish a book, sell it to a nearby library, and then go to court for notice of information from the book during litigation [9]. In one case, the court explicitly pointed to the superiority of information from a print source over information from an information network: “an Internet site determining distances does not have the same inherent accuracy as professional medical dictionaries, or encyclopedias, or other matters commonly known in the community” [12].

Another negative side of the use of the Internet in the evidentiary procedure is the view that the concepts of “public availability” and “public notice” are not identical. The Internet provides a convenient mechanism for quickly establishing a fact, but not all Internet sources are undoubtedly accurate, and a fact is not necessarily “common notice” simply because it can easily be found on the Internet [12]. In Russia, some researchers agree with this approach. With the spread of the Internet, it has become possible to say that there are facts readily available for inspection by judges and litigants in modern civil litigation. However, the ease of verification of the existence of a fact does not yet classify it as a well-known circumstance [13]. In support of this position in one case, the arbitration court of cassation reversed the decision of the court of appeal, which in deciding the case took into account the data from the Internet, indicating that they are publicly available. The Court of Appeal did not consider that the public availability of information posted on the Internet does not mean their publicity and therefore is not a basis for exemption from proving [14].

We can say that the negative side of the Internet as a source of information about irrefutable facts is the doubt about the reliability of such a source and the lack of direct criteria of public notice. While understanding and generally agreeing with these conclusions, attention should be paid to the positive aspects of the problem.

Obtaining information from the Internet is much faster and more convenient than using any other source of knowledge. These properties may be stronger than all the arguments against using information from the network in the evidentiary procedure. The number of lawsuits using the Internet is growing. By establishing judicial notice of Internet content, courts contribute to the economy and convenience of litigation [15]. The meaning of the exemption from proving commonly known circumstances is reduced to the procedural economy by eliminating the need to present, examine, and evaluate evidence in support of a fact that is already known to all. Today, the court can get a lot more facts of public notice from the Internet, which will free up additional time for the trial and use it for the necessary purposes. In addition, the Internet can serve as a tool to deepen understanding of highly specialized issues of establishing judicial notice from authoritative sources in the public domain [16].

Reliability on the Internet is heterogeneous. Certain sources of information from government websites, mapping services, or official news agencies may be sufficiently accurate and therefore admissible under the doctrine of judicial notice. Some other sources, open by anonymous owners or aggregators of information, may be much less accurate [9]. It’s a very important point that an entire network cannot be characterized as an “unreliable” source. For example, the mapping services Google Earth and YandexMaps may well be considered exceptionally “reliable” for obtaining information about facts not subject to judicial proof. This practice has already taken place: one court obtained information about the house’s location on the land plot using Google Earth and found this fact not subject to proof [17], the other used YandexMaps and took as common notice the fact of the store at a distance of clearly less than 100 meters from the school campus [18]. In the practice of the courts of FRE Rule 201 application, there are also sufficient examples of the use of “reliable” sources of information from the Internet. For example, the District Court in
Texas established judicial cognizance of the “fair market value of the property” as published on the Harris County appraisal website [19]. In Stephens v. Miller, The Tenth Circuit Court of Appeals found judicial notice based on information obtained from an online medical reference service [20]. Reference to the medical service is a common source that courts use for judicial notice because it is “a source whose accuracy cannot reasonably be questioned” [3].

5 Conclusion

It should not be assumed that the influence of Internet information resources on the process of judicial proof is a temporary or insignificant phenomenon. It is quite obvious that over time, more and more judges will look for the necessary information on the Internet, rather than in a printed encyclopedia or almanac. The real question is not whether to allow online information to influence legal processes but how to regulate the inevitable flow of this information for fact-gatherers [9].

Without denying that not all information on the network is reliable, and the nature of its public availability does not always correspond to its public notice, it should be recognized that many online resources contain a wave of reliable information, and the procedural economy in proving using the Internet is obvious. At the same time, certain rules are necessary for the use of Internet sources in the process of judicial proof. That said, identifying specific websites or sources of information worthy of judicial notice is less valuable than developing a theory for evaluating specific sources [9].

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Formation of unified forensic support for criminal proceedings in murder cases

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Abstract. The article is devoted to the problem of improving preliminary investigation and court proceedings in criminal homicide cases. It is indicated that the radical changes in the political, economic, social and cultural life of Russian society have led to significant qualitative and quantitative changes in the structure of Russian crime, including such of its most dangerous part as violent crimes, which include intentional homicide. The author points out that the detection and investigation of homicides are often challenging for law enforcement agencies since these crimes are usually non-obvious. The murderers make significant efforts to obstruct the investigation, destroying traces and instruments of crime, and making attempts to hide the bodies of the murdered. It is noted that the protection of human life is a priority task of the Russian state. In this regard, successful detection, investigation, and prosecution of homicide cases must be a priority. As a result of the study, the author concludes that one of the most effective ways is to develop unified forensic support for the preliminary investigation and trial in criminal homicide cases. It examines the concept of single forensic support, its structure. Arguments in favor of developing unified forensic support are given. Keywords: murder, forensic methodology, preliminary investigation, trial

1 Introduction

The subject of this article is the problems of improving the forensic methodology of the criminal investigation, in particular, such a direction as the forensic methodology of the investigation of murders. We believe that the problem of improving the forensic methodology of a homicide investigation is currently of particular relevance. As the study showed, the current stage of development of our society is characterized by significant changes in the political, economic, cultural, social, legal and other sectors. These changes were also reflected in the level and structure of crime, including grave and especially grave crimes, which include intentional homicide. Thus, according to the data of the Ministry of Internal Affairs of the Russian Federation for January-October 2021, the proportion of grave and especially grave crimes in the number of registered crimes increased from 27.8% in January-October 2020 to 28.4% [1]. The number of murders committed against two or more persons has increased. For example, according to the Russian Investigative
Committee, on August 5, 2021, a family of five people – a mother, her husband, her son, her granddaughter and her husband’s brother – were killed in the village of Jirim in the republic of Khakassia. They were stabbed. The suspect was a local man born in 1985 [2].

The number of murders committed by organized criminal groups has increased. For example, on November 14, 2021, the Investigative Committee of the Russian Federation indicted Oleg Medvedev-Shishkanov, a “thief in law”. According to investigators, in 1992, after serving a prison sentence, he created an organized criminal group. His gang had been extorting businessmen from the Ramensky District of Moscow Region for many years. Those who refused to cooperate with them were killed by the bandits. The gang committed murders, kidnappings, arms and drug trafficking [3].

Of particular concern is the increase in murders committed against juveniles and minors. According to the website Izvestia.ru, in the last five years in Russia, the number of crimes against minors has increased by 20%. According to the Investigative Committee of the Russian Federation, in 2020 there were 22,004 criminal cases for crimes, including murders, committed against minors. In 2021, a court in Nizhny Novgorod Region passed a sentence in a criminal case involving the rape and murder of a 12-year-old schoolgirl. The murderer turned out to be a repeat offender, who had already been tried in 1992 for a similar crime [4].

It is still relevant to improve the forensic methodology of the investigation of past murders. Thanks to the introduction of modern technical means and new possibilities of forensic examinations into the investigative practice, improvement of cooperation between investigative and inquiry bodies, it is possible to solve and successfully investigate criminal cases of murders that are many years old, which until now have been considered hopeless. The following example may be cited. The Investigative Committee of the Russian Federation in 2021 completed a criminal investigation into the murder of a married couple. The spouses were charged with the organization of murder in a group of people and murder to conceal another crime, and premeditated destruction of property (clause 3 of Article 33, clause ‘g’ of Part 2 of Article 105, clause ‘k’ of Part 2 of Article 105, clause 2 of Article 167 of the Criminal Code). The murders were committed by them more than 17 years ago. The investigation found that in August 2004 they committed the murder of an acquaintance on the grounds of jealousy, and their employees were involved as accomplices. A woman had an appointment and came with her husband. They first murdered a woman, whose body was stabbed and then her husband. It was found that all this time the accused and even their children were living on fake passports, even changing their age, living in different regions of Russia, but were detained in the Moscow region [5]. Thus, there are both negative and positive examples of homicide detection and investigation.

The above, in our opinion, causes the relevance of the problem of further improvement of the forensic methodology of the investigation of murders. Issues of development and improvement of the forensic methodology of homicide investigation were given attention in the works of both Soviet and Russian scientists and criminalists. The works of F.Y. Berdichevsky [6], A.I. Dvorkin [7], G.N. Muduygin [8], V.N. Isayenko [9], A.M. Kustov [10] and others can be mentioned. Despite the already existing forensic developments devoted to the methodology of homicide investigation, the problem of combating it with forensic methods and means remains. It seems that one of the promising areas of improvement in criminalistic methodology is the development of unified forensic support for their preliminary investigation and trial.

The study showed that the issue of forensic support of the investigation has been given attention in the criminalistics literature. However, as the study showed, there is no unity of opinion among the authors regarding the concept, structure and content of the category in question.
Kolomatsky V.G. believed that the criminalistic support of preliminary investigation is a system of implementation in the practical activities of officials, departments, services and internal affairs bodies to protect public order and combat crime criminalistic knowledge embodied in the ability of employees to use scientific, methodological and tactical forensic recommendations, technical and criminalistic means and technologies of their application for the prevention, detection and investigation of crimes [11].

Belkin R.S. believed that it is a system of forensic knowledge, skills and abilities of their employees to use scientific forensic recommendations, apply forensic tools, methods and technologies of their use to prevent, detect, uncover and investigate crimes [12].

Volynsky A. F. notes that this is complex in its content activity aimed at the formation of conditions of constant readiness of law enforcement agencies to effectively use criminalistic methods, means and recommendations for the detection and investigation of crimes [13].

Akimov S.R. writes that forensic support of investigation – a system of creation, improvement and use of criminalistic knowledge, skills, abilities, technical and criminalistic means of law enforcement agencies for the detection, investigation and prevention of crimes. The system of forensic support of detection, investigation and prevention of crimes consists of the following elements: scientific and methodological support; training and methodological support; personnel support; technical and forensic means; organizational support [14].

As can be seen from the above definitions, there is no unanimity among criminalists regarding the definition of criminalistic support and its content. In addition, most authors traditionally limit forensic support only to the scope of the preliminary investigation, while we believe it should extend to criminal homicide proceedings. The study showed that at present there are virtually no works that would address the need to form unified forensic support of preliminary investigation and trial in criminal cases, including murders. The problem, in our opinion, is both the lack of a unified understanding of the need to develop unified forensic support of preliminary investigation and trial in criminal cases of homicide and the lack of a general opinion on its concept, structure and content. In this regard, the author has attempted to express his opinion on the above-mentioned problems. The aim is to formulate the author’s concept of forensic support of preliminary investigation and trial in criminal homicide cases. To achieve it, the tasks are set to study and analyze the points of view available in the science of criminology concerning criminalistic support, to give the author’s arguments in favor of the expediency of creating unified criminalistic support of the preliminary investigation and court proceedings in criminal cases of homicide.

2 Materials and methods

When writing the article, the author used the following methods: dialectical method as a universal method of scientific knowledge, comparison, description, analysis, hypothesis.

3 Results

The study led the author to the following results. Forensic support of the preliminary and judicial investigation of homicides can be defined as a system of elements of technical, tactical, methodological and forensic support, issues of preparation, providing forensic knowledge to employees of investigative agencies, courts and prosecutors on preliminary investigation and judicial proceedings of criminal cases.

The first object of study within the unified forensic framework is the criminal activity of intentional homicide. It should be studied as a complex, multi-component phenomenon,
which includes the murderer himself, whose personality should also be considered as a systemic formation, the interaction of the murderer with the environment and other subjects, the interaction with the victim.

Cognition of criminal activity is realized by conducting verification actions on the facts of committing acts or finding corpses with signs of violent death, investigative actions within the framework of initiated criminal cases and operative-investigative measures, also in the process of conducting expert studies. The second object of cognition within the unified forensic support should be the activity of preliminary investigation and trial of these cases. After the initiation of a criminal case, its examination is carried out in the form of evidence following the procedure provided for in the CPC RF. The subject of proof in criminal cases of homicides is the totality of factual circumstances that must be established in a criminal case to resolve it correctly.

Evidence in criminal cases of homicide is implemented at all stages of the criminal process. During the pretrial stages, the evidence necessary and sufficient from the investigator's point of view to establish all the circumstances of the subject of proof is primarily collected and verified. Evidence in a criminal case of homicide is in a procedural form. In the court of the first instance, evidence gathered during the pretrial stages is checked and evaluated, which does not exclude the right to present new evidence to the court. There are peculiarities of the evidentiary process that are specific to a jury trial. Along with the procedural proof in criminal cases of intentional homicide, it is possible to distinguish the forensic proof in criminal cases of homicides.

The system of criminalistic support of preliminary investigation and trial in criminal cases of homicide should correspond to the system of criminalistic science and include: general theoretical provisions on the criminalistic support of preliminary investigation and trial in criminal cases of homicide; technical and criminalistic support of preliminary investigation and trial in criminal cases of intentional homicide; tactical and forensic support of the preliminary investigation and court proceedings in cases of homicide; methodological and forensic support of the preliminary investigation and court proceedings in criminal cases of homicide.

The subject of forensic support of the preliminary investigation and court proceedings are patterns of criminal activity for murders, patterns of activity for preliminary investigation and court proceedings in criminal cases of homicides.

We believe that the following arguments can be made in favor of unified forensic support of preliminary investigation and trial in criminal cases of intentional homicide. Preliminary investigation and trial are interrelated; the preliminary investigation is the basis for the subsequent judicial investigation. At both designated stages of criminal proceedings, investigative actions and judicial actions of investigative nature are carried out, during which the same tactical techniques and recommendations can be applied. There is a similar composition of subjects, both during the preliminary investigation and in court proceedings (investigator, operatives, experts, specialists, prosecutor (public prosecutor), court, witnesses, victims (some subjects change their procedural status in court (accused – defendant, prosecutor – public prosecutor)). In both cases, special knowledge in the form of appointment and performance of forensic examinations, interrogation of experts and specialists is applied, which also involves the use of recommendations developed in forensics in general, and in forensic techniques, in particular. Forensic technique, as the study of practice shows, is used both during the preliminary investigation and in court. Both preliminary and court investigations involve the use of procedural and non-procedural forms of interaction between their participants (investigators, prosecutors (public prosecutors), operatives, experts, and specialists).

Both during the preliminary investigation and in court, information models of the murder mechanism are used. During the preliminary investigation, the investigator uses
typical models; during the judicial investigation, the information model of the murder mechanism formulated in the indictment is examined. Unifying within the framework of single forensic support of preliminary investigation and trial in criminal cases of intentional homicide are the properties and personality traits of the same subjects involved, the same traces, crime instruments, and the environment are investigated. Both at the preliminary investigation and in court the same circumstances are to be established and proven, as outlined in Article 73 of the CPC RF. There is a common task to identify, fix and prove the guilt of the person. Both at the preliminary investigation and during the trial their investigative situations are formed, which require their resolution by forensic means.

We believe that within the framework of unified forensic support of preliminary investigation and trial in criminal cases of intentional homicide, it is relevant to create an end-to-end forensic methodology of preliminary and forensic investigation in cases of homicide (Article 105 of the CC RF). Both in the preliminary investigation and the trial, there is an investigation, so we can talk about a through forensic methodology of preliminary and trial investigation in criminal homicide cases. Preliminary and judicial investigation: common goal, objectives, principles, theoretical foundations, subjects and object of cognition, methods of cognition.

4 Discussion

As shown by the study of forensic literature, in different periods leading domestic scientists-criminalists have expressed different points of view on the concept and content of the forensic support of the investigation.

From the analysis of the definition proposed by Kolomatsky V.G. it is clear that, first of all, he considered forensic support as a system of knowledge, based on which recommendations are developed for the detection and investigation of specific crimes, i.e., we believe that Kolomatsky V.G. is a supporter of information understanding of forensic support of the investigation.

Volynsky A.F. understands forensic support as not criminally significant for the detection, investigation, trial and prevention of crimes information in the form of forensic knowledge, but the activity aimed at creating the conditions of readiness to use the achievements of forensics in the fight against crime. In this case, the definition does not disclose what the author understands under the creation of conditions of constant readiness. It does not speak about the forensic support of the detection and investigation of crimes, but about the technical and forensic support, that is, he singles out a special forensic technique as a section of the science of criminalistics, leaving theoretical and methodological part of criminalistics, forensic tactics and methodology out of the consideration.

Akimov S.R. does not speak about the forensic support of detection and investigation of crimes, but about technical and forensic support, that is, he singles out a special forensic technique as a section of the science of criminalistics, leaving outside the scope of the theoretical and methodological part of criminalistics, forensic tactics and methodology.

Makhtaev M.Sh., Yablokov N.P. believe that forensic support of investigation – is a system of forensic knowledge and skills of employees on the technology of using scientific recommendations, tools, techniques and methods of criminalistics to detect, disclose, investigate and prevent crimes [15].

Kuemzhieva E. G. writes that forensic support of the investigation is the development of new and improvement of existing technical and forensic means, tactical techniques and methodological recommendations for the collection, examination, evaluation and use of evidence and should be aimed at creating a model of criminal activity, which is based on knowledge of the criminalistic characteristics of criminal activity [16].
She correlates forensic support with the development of forensic recommendations in the field of forensic tactics and methodology while overlooking the theoretical and methodological section of criminalistics, which, in our opinion, also plays an essential role in the development of forensic support for the investigation of crimes in general and homicide in particular, since it is in this section that the question of the subject matter, which is important for the development of forensic support for investigation as the question of the subject of science-forensics, which, we believe, is directly related to the question of the subject of forensic support of intentional homicide.

All points of view on the forensic support of the investigation can be divided into two groups: one group of authors implies under the forensic support of the investigation system of forensic knowledge, the other understands it as the activity aimed at creating the conditions of readiness to use technical means for the detection and investigation of crimes.

Among criminalists to date, there is no consensus about it: some authors talk about technical and forensic support investigation, others – about the tactical and forensic, and others include in this concept, along with techniques and tactics, methodological and forensic recommendations. In addition, as mentioned above, the definitions cited refer only to the creation of forensic support only for preliminary investigations.

We argue for the need to include in the subject of knowledge of forensic science the regularities of criminal proceedings, including murders. We believe that the most in need of criminalistic support is the central stage of judicial proceedings – the judicial investigation, in which a comprehensive investigation of the criminal case file and establishment on their basis, and possibly additional evidence that appeared during the judicial investigation, the circumstances of the crime committed, subject to determination and proving both during the preliminary investigation and in court following the CPC RF.

Trial proceedings should be an integral part of the subject matter of forensic science; forensic recommendations should be implemented to the greatest extent in the central part of the trial – the judicial investigation.

5 Conclusion

The problem of homicide investigation has received considerable attention in Russian and foreign literature [17, 18, 19, 20]. Despite the already numerous works devoted to the investigation of homicide, both domestic [17] and foreign authors [18], published in domestic and foreign publications, the problem of combating homicide with forensic means needs a further solution. We believe that the improvement of forensic activities associated with the fight against intentional homicide should follow the path of the development of unified forensic support for the preliminary investigation and trial of these criminal cases. Structurally, this forensic support should include as its constituent elements the following: general theoretical provisions on forensic support of the preliminary investigation and court proceedings in criminal cases of homicide; technical and forensic support of the preliminary investigation and court proceedings in criminal cases of intentional homicide; tactical and forensic support of the preliminary investigation and court proceedings in cases of intentional homicide; methodological and forensic support of the preliminary investigation and court proceedings in criminal cases of homicides.

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Problems of using modern proof technologies in jury trial

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Abstract. The features of evidence technology in criminal cases are of particular interest in the context of expanding the jury trial competence. The article presents the analysis results of modern proof technologies used in the judicial investigation with the participation of jurors, as well as suggestions for optimizing such use by the prosecution and defence parties. The study was conducted on the basis of integrated approach to the use of criminal procedural, forensic, psychological and other knowledge to improve the effectiveness of evidentiary activities by the prosecution and defence parties. The authors propose algorithms of the proof process developed on the basis of a situational approach, taking into account both typical situations of preparation for trial by jury, and typical situations of judicial investigation. The technology of preparation for a judicial investigation is presented in the form of an algorithm, which includes two main stages: the study of initial information and the construction of an evidence base. The authors consider the problems of “shocking” evidence use admissibility by the prosecution in a judicial investigation with the participation of jurors, as well as issues of preventing and overcoming judicial errors. The article proves that digital technologies, including video modelling, audio and video logging, blockchain technologies make significant difference in the process of proving due to modern conditions of technological development. The problem of differentiation the concepts “video recording” and “video logging” for a court session is highlighted. The proposal on the legislative consolidation of video logging was made. The use of artificial intelligence technologies in the framework of the trial is considered as a new modern means of proof. The authors show that the use of modern means and technologies of proof allows the parties to the prosecution and defence to develop an effective strategy and tactics of participation in the trial by jury.

Keywords: jury trial, innovative technologies of proof, forensic technologies, judicial investigation, digital technologies

1 Introduction

The problems of optimizing and improving the efficiency of judicial investigation are quite discussed and relevant topics of scientific research all over the world. The evidentiary activity of the parties in court with the participation of jurors, which undoubtedly has its own specifics, causes particular complexity. This is due to factors such as: the truncation of the proof subject; the existence of legal restrictions on information that can be investigated in a trial with the participation of jurors; the immediacy of research and evaluation of evidence by a jury.

The traditional division of the proof process in criminal cases into three stages in accordance with Article 85 of the Criminal Procedure Code of the Russian Federation does not fully cover the study of intermediate (auxiliary) facts. Therefore, further development of the

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ideas of Khmyrov A.A. on the need to expand proof stages by forensic tools use is advisable [1]. The experience and knowledge accumulated by criminology in the field of technical and forensic, tactical and methodological foundations of crime investigation can be effectively applied by the prosecution and defense parties in a jury trial. In this regard, it makes sense to focus on modern technologies. However, in the scientific literature, the problems of proof technologies in judicial investigation as a means of verifying and evaluating evidence are poorly studied. Although they have great potential in judicial practice, especially when using remote technologies (videoconferencing), which have become very popular over the past two years, especially in connection with the lockdown during the pandemic.

The study of evidentiary technologies problem and the identification of individual modern means of proof specifics is not only of deep fundamental, but also of applied importance, since it really ensures the true competitiveness of the parties, allowing them to competently build their own strategy and tactics on the basis of forensic recommendations.

The objectives of the study are to identify and analyze the main modern innovative tools able to increase the effectiveness of judicial investigation in a jury trial and development of technology for their use by the parties to the defense and prosecution.

2 Materials and methods

The research methodology was based on a set of general scientific and special methods for studying the strategy and tactics of judicial investigation, as well as the analysis of the results of scientific research on the subject under consideration [2-5]. Comparative results analysis of studying the prosecution and defense tactics phenomenon in the judicial investigation allowed us to establish the genesis of this issue in Russia and foreign countries. Statistical and specifically sociological methods (interviewing judges, prosecutors and lawyers) were used in the collection and analysis of empirical material. The method of comparative jurisprudence was also used in the analysis of statistical and empirical data obtained by scientists in Russia and other countries when monitoring the effectiveness of the jury [6-10].

Situational approach to the analysis of judicial investigation various stages was used to increase the targeting of the developed scientific and practical recommendations: the method of situational modeling allowed us to develop algorithms for the application of appropriate proof technologies by the parties of the prosecution and defense in the judicial investigation. Two main stages of preparation for the trial were identified for this purpose on the basis of a system-structural approach: 1) the stage of studying the initial information; 2) building an evidence base.

The technological algorithm of preparatory activity can be represented as follows.
1. Analysis of the indictment and other case materials taking into account the criminalistic characteristics of the relevant type of crime.
2. Construction of the crime event retrospective situational model, accompanied by an analysis of all the components of criminal situation, reflecting the stages of criminal activity.

Each situation constituting an event of a crime is formed by certain elements consolidated in particular evidence for the case. The simulated criminal event is evaluated in a systematic relationship with all the collected evidence, which minimizes the risk of making a proof error when assessing the relevance, reliability and sufficiency of evidence [11].

3. Modeling the tactics of the parties in the judicial investigation.

The method of situational modeling allows us to identify typical investigative situations developing in court with the participation of jurors. It can be done on the basis of studies already conducted in relation to investigative situations. For example, Khmyrov A.A.
identified six groups of investigative situations. Circumstantial evidence is predominant in five of them [12].

The use of reflexive games theory in conjunction with perspective modeling allows the defense or prosecution side not only to predict possible situations of judicial investigation, but also to identify the intentions and alleged actions of the opposite side. For example, a defense lawyer, as a result of forecasting possible scenarios that the prosecution may be guided by, can most likely develop optimal ways for refuting the prosecution’s arguments in a particular judicial situation.

4. Determination of actions to eliminate gaps in the preliminary investigation in advance, established on the basis of evidence assessment.

Unlike the consideration of a criminal case by professional judges, where the resolution of many problematic situations is possible during the entire trial, avoiding the consequences that negatively affect the outcome of the case, in a jury trial, such circumstances can significantly reduce the credibility of the prosecution and lead to an acquittal verdict as a result.

For this reason, in a jury trial, it makes sense to resolve the main layer of problematic situations caused by gaps in the preliminary investigation, as part of the trial preparatory by the application of relevant petitions by the parties [13]. Otherwise, the statement of such petitions by the prosecution takes place at the stage of judicial investigation, often within the framework of reflecting the arguments of the defense, which has established the existing problems and aims to discredit opponents.

On the other hand, the use of information on the procedural errors committed by the prosecution is one of the methods of tactical influence by the defender on the trial outcome. The errors found can be the basis of defense tactics, as well as appeals against the court verdict, when using situational modeling, the defense version in the judicial investigation, usually, looks more reasonable and convincing.

5. Differentiation of evidence: a) evidence that does not raise doubts about the admissibility; b) evidence causing avoidable doubts; c) evidence not to be used.

It is important to formulate briefly the reason for attributing evidence to a particular group in order to obtain a basis for planning tactically correct decisions at the judicial stage of the case as a result of the differentiation carried out.

The second stage is the construction of the evidence base which includes the following stages.

1. Isolation from the initial evidentiary model of the prosecution of particular circumstances indicating the fact of the crime and the fact of guiltiness of the defendant. The establishment of these circumstances falls within the competence of jurors by virtue of Part 1 of Article 339 of the Criminal Procedure Code of the Russian Federation.

2. Determination of evidence range confirming the existence of the circumstances of proof.

3. Verification of these evidences for compliance with existing legal restrictions, predetermined by the peculiarities of the proceedings in question, in order to establish those cannot be used as the basis of the evidentiary process in the presence of jurors.

3 Results

The analysis of scientific literature and judicial practice has allowed us to establish that one of the controversial issues is the problem of the admissibility of “shocking” evidence that might have an excessive emotional impact on jurors. Such evidence can form a subjective negative attitude of the jury towards the defendant even before the verdict is rendered.
[2]. Judicial practice confirms that the legislation has not established the conditions when “shocking” evidence can or cannot be examined in court with the participation of jurors.

Thus, by the verdict of the jury V. was found guilty of committing the murder of P. Color photographs of the crime scene inspection with an enlarged image of the corpse were presented to the jury for examination. The Court of Cassation pointed out that the photos are not “shocking”, they show the number and location of wounds on the victim's neck [14].

V. and K. were acquitted by a panel of jurors in a criminal case of murder committed as part of an organized group in socially dangerous way. The state prosecutor was refused to show photos of the corpse disfigured as a result of car explosion. The Court of Appeal pointed out that the event of the crime was established by the inspection protocol, and the refusal to submit such materials could not affect the response of the jury that the crime was committed by the defendant [15].

Courts make different decisions in the circumstances of a particular criminal case and the contents of the “shocking” evidence. It cannot be excluded that the court decides on the admissibility of the examination of such evidence by jurors with a certain degree of subjectivity. At the same time, the examination of evidence that is essential for establishing the factual circumstances of the case and subject to determination by the jury is legitimate.

Thus, the Court of Appeal recognized the demonstration of crime scene inspection protocol with a photo table by the state prosecutor as not violating the provisions of Part 8 of Article 335 of the Criminal Procedure Code of the Russian Federation. The Court of Appeal pointed out that the State prosecutor performed the procedure function of presenting evidence obtained with no violation of the criminal procedure law [16].

On the one hand, the question arises whether the principle of competition and equality of the parties is being implemented. The state prosecutor has the right to use such a lever of emotional influence as “shocking” evidence. At the same time, the defender is not entitled to such a right: he / she has only the right to present evidence justifying (mitigating) the defendant. On the other hand, the state prosecutor is obliged to support the prosecution in court. On the basis of such obligations, he / she has the right to present evidence that considers necessary. The restriction or deprivation of such rights may lead to the cancellation of the acquittal and, in general, deform the position of the prosecution.

However, judicial practice has developed its own approach to recognizing some “shocking” evidence as inadmissible, the procedure and grounds for its exclusion, despite the absence of the necessary criteria in the legislation. Thus, the Supreme Court of the Russian Federation, when considering this issue, proceeds from the circumstances of a particular case, the method of photos demonstration (in whole or in fragments), takes into account the size, color, presence of blood on the corpse and a number of other circumstances significant, in the opinion of the court, to resolve the issue of the impact of such materials demonstration on the jury’s prejudice [4].

“Shocking” evidence can be recognized by the court either as permissible or not permissible, the question lies in the competent choice of tactics for their use, both by the prosecution and by the defense [10]. In this regard, some authors propose to introduce a psychological criterion for evidence admissibility [17]; others believe that it is unacceptable to exclude legally obtained evidence, even though it may cause bias against the defendant [4].

Significant role in the system of modern proof technologies is also given to innovative technologies of visualization, collection and presentation of evidentiary information: simulation and modeling systems, video recording of the court session, the use of artificial intelligence capabilities.

Computer simulation and modeling systems in criminal proceedings are just beginning to be investigated. The concept of video modeling appeared, which means “a form of three-dimensional
data visualization created for forecasting purposes” [5]. The main purpose of video modeling in criminal proceedings is not just forecasting by the software and computing techniques capabilities, but the presentation of factual data already collected in a visual form [11].

Successful definition of crime event model studied by the participants in the process was given by Lozovsky D.N.: “…the investigator does not create a drawing or diagram, but creates a mental image of the crime event, which can be recorded using drawings, diagrams, charts, linguistic or mathematical symbols, etc. But all of the above are not models but only means of fixing” [7, 17].

We believe that the following term is most acceptable in criminal proceedings: situational computer simulation and modeling systems as digital technologies for visualizing evidentiary information in a judicial investigation. The use of a situational simulation-modeling system in a judicial investigation with the participation of jurors will make possible to visualize the situation of the crime committed and the elements of the real situation as much as possible.

Quite promising in this regard are domestic software developments “3-D Witness”, “Virtual designer of the crime scene”, etc [18]. However, the use of software products to create simulation-modeling systems will require certain intellectual costs.

4 Discussion

There are certain problems in regard to the technology of video recording of the court session and its results. In our opinion, it is necessary to differentiate the concepts of “video recording” and “video logging” for the court session. Video recording serves as an addition to the minutes of the court session. The task of video logging is an equivalent replacement of the court session minutes. The majority of the interviewed judges of the Russian Federation assume that the video logging of the court session will be used in the future as a means of fixing the course of the judicial investigation [6].

We believe that in a jury trial, video logging can become a next step after the mandatory audio logging of the court session course. This issue should be settled at the legislative level.

The use of artificial intelligence in judicial investigation should also be highlighted among the newest means of proof. These are proctoring technologies, i.e., remote supervision during distance interaction [19], which might be used, for example, to control the testimony of an “anonymous” witness interrogated by video conferencing. As a number of researchers correctly point out, this technology is one of the “youngest”. It was applied for the first time in 2008 in the USA, as a system for monitoring online exams for distance learning students. Today proctoring technologies in this country are successfully used in criminal proceedings. The interrogation of an anonymous witness using mixed proctoring is very effective, when a court technician uses software to monitor the facial expressions and non-verbal communication of the witness and the interrogated person’s eye contact with third parties during the interrogation [8].

It seems that the experience of jury voting using Kaspersky Lab’s Polys electronic voting systems could be quite in demand. This system is presented in the form of blockchain technology and is quite convenient and easy to use. The experience of using this technology has successfully proven itself during the Plenary session of the Council of Judges of the Russian Federation in 2020.

5 Conclusion

The use of modern means and technologies of proof by the prosecutor and the defender, taking into account the specifics of judicial situations, allows the subjects of proof to assess
the quality and completeness of evidentiary information as much accurately as possible and to develop an effective strategy and tactics of trial participation, thereby increasing the efficiency of the jury.

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Forensic science in the law enforcement system: problem statement

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Abstract. The article examines cases of ignoring the requirements of criminal procedure legislation and forensic science recommendations to the detriment of the rights and legitimate interests of citizens suspected or accused of committing economic crimes. Systemic violations of the law and criminalistic tactics provisions were revealed as a result of the generalization of practice. The authors have studied theoretical works dedicated the problem of the gap between the criminal procedure theory, criminology and law enforcement practice and consider it to be the most relevant and significant at present. The investigator turns from a procedural figure investigating a crime into a person who draws up the results of checking a crime report without subjecting them to subsequent verification and evaluation. What is happening not only detracts from the prestige of investigative activity, but also distorts the judicial perspective, leads to the illegal and unjustified judicial decisions. The solution of the problem under study is possible by more active introduction of scientifically-based criminology recommendations into investigation practice as well as by strengthening the role of investigative unit heads in order to ensure respect for the rights and legitimate interests of citizens. Public discussion of the problem and development of regulatory and legal support allowing an adequate response to detected violations of the criminal procedure law are necessary at this stage.

Keywords: criminal procedure, forensic science, law enforcement, suspect, accused, investigator, investigation

1 Introduction

Forensic science can be considered as a science, an academic discipline and as a type of practical activity. There is no doubt that forensic as a science has been equipping investigators with advanced technologies for many decades and leading to the increase of crime detection efficiency and investigation in practice. Ensuring the implementation of scientific results in practical activities, criminologists improve existing, develop new technical and tactical forensic tools that must comply with the law, moral standards, be effective and reliable [1]. It is generally recognized that the State guarantees the observance and protection of human and civil rights and freedoms in criminal proceedings. However, in

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the practice of investigating crimes, both the forensic science recommendations and criminal procedure legislation are often ignored.

During the process, investigators face pressure from the heads of investigative bodies, who are often guided not by the law, but by the desire to improve the statistics of a particular unit. As a result, there is a situation that can be defined as the priority of statistics and ignoring the law to the detriment of the rights and legitimate interests of people suspected or accused of committing a crime. These can be both oral instructions to finish a criminal case within a specific time limit to the detriment of quality, to bring to criminal responsibility in the absence of evidence of guilt and other similar unlawful demands.

We consider the most urgent problem in the investigation of crimes to be the increasing gap between the theory of criminal procedure, forensic science and the practice of their application.

The research is based on the study and generalization of specific criminal cases confirming the significant differences between the requirements of the law, the recommendations of forensic science and law enforcement. As a result of the comparative analysis, conclusions are drawn about the need to increase the role of science in practice and to reduce the gap between theory and practice.

2 Materials and methods

The article examines the specifics of law enforcement activities in criminal cases of economic orientation, due to the priority of statistical information on the state of crime, starting from a specific investigative body, and ending with the entire law enforcement system of the country. For this purpose, the theoretical works of scientists concerning the detection of forensic information, its movement and transformation into evidence are summarized. Then the analysis of the practical application of the criminal procedure legislation provisions regarding the collection, verification and evaluation of evidence was carried out.

Among the general scientific methods used were the following: analysis and synthesis, deduction and induction, modeling, experiment. Special research methods were system-structural, comparative-legal, statistical and sociological.

The totality of the methods used, as well as the totality of the empirical material studied, allow us to state the existence of the identified problem and the need for its solution.

3 Results

The criminal procedure legislation presumes the procedural independence of the investigator, who determines the course of the investigation and makes decisions (Article 38 of the Criminal Procedure Code of the Russian Federation). This statement of the legislation is not disputed by scientists who have studied the legal nature of the investigator’s status and the specifics of forensic activities [2]. In practice, the course of the investigation, as a rule, is “determined” by the heads of investigative bodies, based on the priority of statistics. An investigator cannot make a final decision on a criminal case on his/her own. There is an unspoken requirement that any initiated criminal case must be sent to court.

The presented problem has quite deep roots and leads to serious consequences: rapid professional “burnout” of investigators and mass dismissal of young employees. Such relationships at the level of “boss-subordinate” also lead to the fact that the investigator, while working on a specific criminal case, is neither interested in establishing objective
circumstances in the case nor in using the tactical arsenal of forensic science to achieve this goal [3].

Particular contradictions between theory and practice follow from the general problem of investigator procedural independence lack. Thus, Articles 6, 7, 15 of the Criminal Procedure Code of the Russian Federation as well as numerous scientific studies [4] determine the obligation of all participants in criminal proceedings to protect human rights and freedoms, including by forensic means. Judgments are also made about the need to maintain a balance of interests of the parties: prosecution and defense [5]. However, while investigating a criminal case, priority is given to collecting evidence incriminating the commission of a crime, even from fishy sources, which are not subject to subsequent verification and evaluation. For example, in cases of economic crimes, it may be one of the accused who gave “confessions” that do not correspond to reality, but confirm the initial version of the operational investigative activity subject and then slandered the other case participants in exchange for concluding a pre-trial agreement to cooperate with the investigation.

Article 73 of the Criminal Procedure Code explicitly lists the circumstances to be proved. Among them are “the event of the crime”, “the nature and amount of harm” etc. When investigating embezzlement, the attention of the investigation is focused on obtaining evidence proving the ability of the accused to dispose of funds at his / her discretion (for example, see the corresponding comment to Article 159 of the Criminal Code). Investigation does not establish other signs of theft, including the amount of damage, although the note to Article 158 of the Criminal Code of the Russian Federation stipulates this sign as mandatory for any theft, and not only in national legislation [6, 7].

Production of a forensic examination is mandatory to establish issues relevant to the case According to Part 2 of Articles 159, 198 of the Criminal Procedure Code of the Russian Federation. The opportunity to ask the expert additional questions is also provided for participants in the criminal process. Such petitions are refused, as a rule, with reference to the procedural independence of the investigator, if an investigator believes that they may affect the qualification, question the position of the investigation. Tactics of appointment and production of forensic examinations are also ignored [8].

It is obvious that each piece of evidence is subject to an assessment in terms of reliability, and all the evidence collected together is subject to an assessment in terms of sufficiency to resolve a criminal case (Article 88 of the Criminal Procedure Code of the Russian Federation). However, in practice, personal confession or incriminating testimony of another participant in criminal proceedings are the “queen” of evidence even though they do not correspond to reality. Neither official accounting and legal documents indicating the opposite make any difference. The provisions of forensic science on the need to establish the causes of false testimony, identify and eliminate internal contradictions are often rejected [9].

The procedure for appealing the actions and decisions of the investigator provided for in Articles 123-124 of the Criminal Procedure Code of the Russian Federation is no less significant for the protection of rights. The term for consideration of such complaints is 3 days. It can be extended up to 10 days in cases the request for additional materials is needed. In practice, complaints about investigator’s actions and decisions to a higher-level supervisor or prosecutor, in some cases, are registered as appeals of citizens, the procedure for consideration of which is defined by the Federal Law “On the Procedure for consideration of appeals of citizens of the Russian Federation”. The term for consideration of such appeals is 30 days from the date of registration. Part 6 of Article 8 of cited Federal Law is violated because, in addition to artificially increasing the time limits, complaints are usually sent to an official whose actions are appealed thus they are not considered appropriately [10]. Such a formal approach outwardly corresponds to the law, but in fact,
replaces it, deprives case participants of the opportunity to defend themselves from the charge by the means provided for in the criminal procedure legislation [11].

Thus, false testimony clothed by the investigator in a procedural form, not verified by forensic means, is taken for granted. Other evidence is ignored, which leads to a distortion of the judicial perspective and the destruction of citizens’ trust in law enforcement agencies and the court. Verification of the defense’s version of innocence is not carried out, tactical issues of interaction with the defense are simply forgotten.

Of course, errors in the investigation can be identified and eliminated during the consideration of the criminal case by the court of the first instance, and subsequently by the courts of appeal and cassation instances. But there are just few such cases [12, 13]. As a rule, the courts agree with the “opinion of the investigator” and the prosecutor who approved the indictment.

4 Discussion

Based on the results of the study, we have shown the contradictions existing between the specific norms of the Criminal Procedure Code of the Russian Federation, the recommendations of forensic science and the practice of criminal cases investigation for economic crimes. The reasons why this happens can be divided into objective and subjective. One of the most significant objective reasons for this situation is the existing pressure from the leadership of law enforcement agencies and the demand for the final “result” of the work. Thus, if the investigator is poorly trained professionally, there is no such potential. In other words: it is impossible to get the desired result by legal means. So, in practice, “all’s fair”, including illegal means of evidence collection. The problem under study is getting more important taking into account the investigative corps’ weak personnel potential. In any case, such a situation cannot be considered acceptable.

One of the main factors influencing the situation is the position of the leaders themselves, who give their arguments regarding the revealed contradictions, believe that scientists simply lag behind the “needs of reality” [14]. We believe that this issue should be addressed comprehensively. It is necessary to revise scientific approaches to the forensic support of the investigation, ensuring the introduction of modern forensic developments into practice. At the level of practical units, it is necessary to strengthen departmental control, ensuring the implementation of the forensic science recommendations.

5 Conclusion

These cases indicate the presence of a global systemic gap between theory and practice, which needs to be reduced at least. In this regard, scientists need to defend clearly and publicly the theoretical concepts and requirements of criminal procedure legislation aimed at protecting citizens from crime as well as protecting them from unfounded accusations (Article 6 of the Criminal Procedure Code of the Russian Federation), which should be taken into account in practice [15].

The solution of the problem is also possible as a result of increasing the level of citizens’ protection, for example, by providing a real opportunity to appeal against illegal actions and prompt response to detected violations of the law.

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General regularities of the theory of state and law and the regularities of criminalistics

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Abstract. The article analyzes the regularities studied by the theory of state and law and the regularities of criminalistics in the system of legal sciences. It emphasizes the methodological, basic, fundamental importance of the theory of state and law for all jurisprudence, including in relation to criminalistics as a science. The interaction between the theory of state and law and the sectoral legal sciences, manifested on the one hand, in the specification of theoretical provisions developed by the theory of state and law in the sectoral legal sciences, and on the other – the use of the achievements of industrial and historical legal sciences theory of state and law are shown. This proves the point about the inseparable connection between theory, practice, and historical experience. The question is raised about the poor development of the term “regularity”. Many scientists-criminalists began to replace it with others, close in meaning or refuse to use it at all. Reflecting on regularities, it is noted that a legal regularity can only be considered a basic structural relationship of holistic phenomena (systems). The system of law, legal relations, mechanism of legal regulation, offense (crime), and other categories are proposed to be considered as holistic systems. It is emphasized that the denial of regularity manifested in the commission of crimes in criminology is erroneous. It is proposed to expand the subject of criminalistics based on the requirements of today’s changing world in the era of globalization and digitalization.

Keywords: theory of state and law, criminalistics, system of legal sciences.

1 Introduction

Any science is a system of knowledge about society, nature, thinking, which has been accumulated during historical and social practice. Scientific knowledge always penetrates into the basis of phenomena and processes of the objective world, revealing the essence, content, form, and regularity of emergence, development, and functioning. The laws of objective reality investigated by science serve as the foundation of people’s practical activity and experience. The legal sciences also study regularity, so the purpose of this study is to identify and analyze the general patterns of the theory of state and law and criminalistics in the system of legal sciences.

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2 Methods

The conducted research is based on traditional general and special legal methods, including dialectical, logical, system-structural, analysis, synthesis, comparative-legal, formal-legal, and others. They allow to analyze the system of legal sciences, structure it and logically determine the place of the theory of state and law and criminalistics in this system. Through comparative-legal and formal-legal methods of scientific knowledge to form ideas about the laws studied by the theory of state and law and criminalistics.

3 Results

As a result of the analytical work is put forward, the opinion that in the system of legal sciences have regularities in the theory of state and law and criminalistics. Moreover, the theory of state and law has as its object of study the basic general regularity of emergence, development, and functioning of the state and law, and criminalistics a group of regularities that appear during the commission of crimes and in the course of their investigation, the study results are the basis for the development of tools, techniques and methods that optimize the fight against crime.

4 Discussion

The theory of the state, law, criminalistics and other disciplines develop as a component of the general system of jurisprudence.

The theory of state and law sets the main direction for developing legal science and practice. While emphasizing the fundamental nature of the theory of state and law, we do not argue that all other legal sciences are of secondary importance.

Each legal science has its subject of study and its value in the system of legal knowledge. After all, the objective regularities of the development of knowledge about the law are the integration and differentiation of legal sciences and interpenetration in other branches of knowledge.

The theory of state and law studies the basic general regularities of state and law, their essence, purpose, and development in modern society. These regularities are general insofar as they are inherent in the state and law as integral phenomena. At the same time, these regularities are special concerning society’s patterns as a whole. These certain regularities, their identification, justification, and are engaged in the state and law theory. This view of the subject of the theory of state and law dominated Soviet jurisprudence. Later it was revised because the state and the law, being independent legal phenomena, act as social institutions of society, and it is impossible to single out regularities inherent only in the state and the law. Other social phenomena and processes (economic, political, etc.) influence, intertwine and interact with these social institutions. Therefore, the theory of state and law examines the basic general patterns of emergence, development, and functioning of the state and law in relation to other social phenomena. On this basis, the subject of state theory also includes other social phenomena and processes related to the state and accompanying it. Moreover, we propose a new approach to the analysis of changing, multidirectional legal reality and turn the theory of law to the study of real socio-economic, environmental, and other processes, to the identification of contradictions in the legislation, to assess the causes of the inaction of normative legal acts [1]. Indeed, in a changing modern world, many established categories, concepts, definitions should be reconsidered based on the objective legal reality.

Currently, more and more works are appearing that emphasize the role of law in society and pay special attention to the regulatory function of law [2], which affects the content of
social relations. In regulating social relations, the law is based on the principle of law as the key principle of the rule of law [3, 4]. And some researchers offer new methodological approaches to the concept of the principles of law and the recognition by the scientific community of the new principles enshrined in the legislation, their assessment, and justification in the doctrine [5]. Therefore, the theory of state and law as a methodological science reveals new general patterns of state and legal phenomena and processes concretized in the sectoral legal sciences. At the same time, the theory of state and law uses the achievements of branch and historical and legal sciences, synthesizes, systematizes, and generalizes their conclusions, emphasizing the inseparable connection between theory, practice, and historical experience. In this way, a synthesis of knowledge dissected in other legal sciences is achieved. Without specific material, a factual basis for the conclusions of the theory of state and law, it would have no scientific value. New research in jurisprudence always enriches and deepens the conclusions of the theory of state and law. However, it does not duplicate them but formulates such general provisions, based on which the legal sciences comprehend their subject of study from common theoretical positions. It should be noted that, in general, law, as a unique phenomenon, is given more attention not only in the domestic but also in foreign literature [6-8].

As already noted, each science has its subject of study and methodology of scientific cognition. Reflecting on the subject of the subject of legal sciences and analyzing the system of legal sciences, namely the subject of each science separately, we came across the idea that among all legal sciences in forming the subject of scientific knowledge, the only theory of state and law and criminalistics in the definition of their subjects of research note that they are “regularities”.

Laws studied by the theory of state and law and criminalistics, of course, are different, and this is determined not only by the subject of scientific knowledge but also due to the place of these sciences in the system of legal sciences.

To date, the question of the subject of criminalistics is a matter of debate. R. S. Belkin played an important scientific role in formulating the subject of criminalistics and including certain laws, defining it as a science about the laws of emergence, collection, investigation, evaluation, and use of evidence and the means and methods of forensic investigation and prevention of crimes based on knowledge of these laws.

In addition to these regularities, it is proposed to include in the subject of criminalistics the question of the place of the history of criminalistics and its regularities that determined the emergence, formation, and development of criminalistics as a science [9]. And in general, expand approaches to the definition of the subject of criminalistics [10].

At the same time, some scientists-criminalists, because of the weak development of the term “regularity” itself, began to “move away” towards its replacement with other concepts, for example, “essence” [11]. Other authors persistently point to the utopian nature of the rejection of the patterns of objective reality at this stage of development of criminalistics [12].

We tend to share this view, but what is meant by the term “regularity”? In general, patterns are stable, regular, and recurring relationships that express the essence of those or other phenomena. The philosophical category of “law” and “regularity” has a very close connection, and some authors are identified with each other. In philosophy, a law (objective) is an essential, recurring, and stable relationship of phenomena causing them to change in an orderly fashion. V. M. Syrykh [13] also pointed out this circumstance, arguing about the objective laws of the general theory of law. He notes that in the legal literature, an objective legal regularity recognizes the structural connection of the elements of legal phenomena, but not any, but only the basic structural connection of organically whole phenomena (systems). A system is any phenomenon consisting of two or more constituent parts (elements), where each of the parts has relative independence, but the system is an
integral phenomenon, possessing a set of features, properties, functions, inherent only in it but not in its constituent elements. Such holistic systems, in our opinion, include the rule of law, the system of law, legal relations, the mechanism of legal regulation, the offense (crime). Thus, an offense has four elements with inherent only characteristics, while only an offense (a crime) has a holistic, integrative system. Since the subject of criminalistics is a group of patterns that appear during the commission of crimes and in the course of their investigation, the results of the study of which serve as the basis for the development of tools, techniques, and methods that optimize the fight against crime [14], then to abandon the patterns that constitute its subject is inappropriate.

We also share the opinion of scientists about the expansion of the subject of criminalistics under the influence of objective factors of digital, transforming reality, the inclusion of new patterns of use of categories, concepts of modern reality [15]. This is reasonable because the theoretical and cognitive science of criminology will make the transition to the practical plane of the fight against crime, arming practitioners with knowledge, tools, techniques, methods for the detection, investigation, and prevention of crimes, including in the “virtual” reality. This will affect the role and importance of criminalistics as a science [16].

5 Conclusion

It is necessary to emphasize the fundamental, methodological nature of the theory of state and law concerning other legal sciences, including criminalistics as a special science. The connection with criminalistics is indirect, but the study of “regularities” brings the theory of state and law and criminalistics closer together in the system of legal sciences.

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Reasons for a false confession of guilt and their identification during interrogation

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Abstract. The article is concerned with different scenarios for the police and the court to obtain false guilty pleas from a suspect. Having studied the views on the problem, the authors find the problem of false confessions the least studied, because the functioning of the criminal justice system itself does not provide for a thorough study of the identity and motives of the suspect, if these motives are not related to the crime. Delusion and lies are an inherent quality of the mentality, which implies the need for a complete critical analysis of all the statements of a person given by him during interrogation. The choice of technologies for establishing sympathy and starting communication with a suspect is quite wide. However, not all of them are applicable in the field of justice, because such technologies should basically have a non-manipulative focus. Caution should also be exercised when assisting suspects in recalling forgotten information. Practice shows that mental coercion, together with stress and the absence of a lawyer, often lead to a distortion of the cognitive and emotional processes of the suspect, which inevitably results in violation of the law, sometimes manifested as a non-violent confession of guilt. This situation is not perceived as an illegitimate confession, but leads to damage to the reputation of the judiciary.

Keywords: crime, interrogation, suspect, delusion, guilt, proof, investigation

1 Introduction

The investigation activity faces the permanent need for communication between the investigator and the suspect in a form determined by law and ethics. This type of communication inevitably faces the problem of inducing the suspect to it, because the law gives him the right to protection. In turn, the defense against prosecution provides both the possibility of refusing to communicate before the trial and the absence of punishment for lying for the suspect.

Based on the universal principles of legal protection, established by the International Covenant on Civil and Political Rights of 1966 [1] and the criminal procedure law of all states that have acceded to it, law enforcement agencies are tasked with ensuring justice only by means established by law, without degrading human dignity.

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Ensuring law and order, investigators are faced with various situations of counteraction by suspects, which can lead to adverse consequences, for example, self-incrimination of a suspect or bringing an innocent person to justice.

The authors hereof perceive the activity of interrogation of a suspect, defining the strategies for further investigation by the investigator and determining the attitude of the suspect and his lawyer to the position taken in the interrogation, as actual problems of investigation activity.

The study is focused on the specifics of interrogation at the pre-trial stage of the work of the investigator, where the prosecution materials for the court are formed. The interrogation acts as a mandatory means required by law to establish a verbal channel of interaction with the suspect. The parties interact and express their attitudes to the events and evidence known to them through interrogation.

2 Materials and methods

The specifics of lies reported by suspects, and its relationship with the misconceptions that are reported during interrogation are studied herein. Therefor the researchers’ approaches to the problem of distinguishing between false information and misconceptions, the means they offer for verifying the reported information and the practical feasibility of these approaches in the real work of investigators are considered.

The research methods include comparative analysis, content analysis of generalized materials of interrogation practice, the logical method, the method of induction and deduction, the statistical method, the method of historical analysis.

The methods of the study have methodological limitations in terms of the relevance of the results obtained to persons with any cognitive or mental disorders, as well as adolescents with mental retardation. The authors state that such suspects need special conditions for interrogation by specialists, and this is due to their features of reflecting reality and the ability to control their behavior.

The study also does not address the problem of alibis and tools for its confirmation.

3 Results

Based on the study of currently existing directions for conducting interrogation, one should imply significant differences both in its conduct and in the methods of its analysis to resolve the issue of the reliability of what abovementioned without the use of any technical means.

The presented problem contains significant philosophical foundations, since the problem of *ad hominem* delusions is rooted in ancient and classical philosophy, where it is considered as a natural state of human consciousness [2]. Consciousness is led to this state of affairs by constantly changing external circumstances and stress, which arises as a result of a person’s awareness of involvement in the trial and the possibility of adverse consequences for it as a result [3].

Another feature of the human mentality is the existence of the possibility of incriminating oneself, either under the influence of suggestion, or realizing the profitability of being held accountable for a less serious crime than for an actually committed one. Recent studies show that under the influence of stress and clarification of the essence of the suspicions raised, the rights of the suspect explained before interrogation serve as the basis for guilt admission [4].

The opinions that granting the suspect the right not to testify against himself, or to remain silent, serves as a trigger for false confessions by the suspect, are also offered.
Moreover, the exposure of such a false confession often occurs only after several expert studies. This situation is due to excessive confidence, which can even be called self-confidence, investigators in deceit or some kind of insincerity on the part of the suspect [5].

As a result, the following situation occurs: a person is only under suspicion, receives this status in accordance with the law, and having received the status, almost all information reported by him is critically rejected as unreliable when it is reported to the investigator. There only one way out from such a logical trap: the maximum verification of the words of the suspect from other sources. However, there is a problem here too, because the words of witnesses can also be critically perceived by the investigator, who compares the information from the suspect with that, reported by the witness [6, 7].

It can be concluded, that the use by investigators of technologies that, by their nature, manipulate the consciousness of suspects, should be restricted. Such technologies of working with the mentality contain the root of the problem of false confessions. These technologies are used to encourage the suspect to communicate, to explain to the suspect the balance of his personal interests and the interests of justice. However, the lack of sufficient time for psychodiagnostics and analysis of all behavioral patterns of the suspect leads to delusion and false admission of guilt, false accusation of other people [8].

This view is shared by other studies as well. Verbal, paraverbal and non-verbal coercion to interrogation leads to a distortion of the semantic field of a person and poses a problem for him to choose the forms of his participation in the interrogation in order to defend own innocence and report anything known on the crime under investigation [9].

Therefore, a combination of coercion, pattern-based contact methods, and the right to remain silent often lead the suspect to a false confession of guilt if he is deprived of the assistance of a lawyer or forced to refuse it for various reasons [10]. This approach substitutes for the law, but it looks plausible in the eyes of the suspect, which complicates further proceedings in court [11].

In addition, false testimony is exposed by other evidence. This evidence may not be disclosed during pre-trial interrogation due to a negative result for the prosecutor to prove. Here is the main reason why the investigator and the police do not check guilt. It is for the court to be done. The decision on guilt can be made by a jury, which does not include professional lawyers. Jurors may not understand the connections between evidence, be guided by their emotional state and stereotypes. Therefore, reconciliation of evidence can take place without due diligence on the part of the jury, and the suspect’s own false confession relieves them of any ethical responsibility for the verdict.

Another difficult situation arises when the suspect himself doubts the reality of the existence of any events. He substantiates his ignorance by the passage of a long time after the event of interest to the investigator, or by several similar events in a short period of time, which leads to difficulties in remembering [12]. In such situations, one has to apply recall by chronological associations, confirming them with some available evidence. In this case, we consider it expedient not to disclose the identity of the witnesses unless absolutely necessary until the trial.

A new direction in the search for false confessions is offered by digital technologies in legal proceedings [13]. Based on the accumulation and analysis of big data, the researchers state the need to introduce into the practice of interrogation automated systems for predicting the behavioral patterns of suspects in order to determine their mental profile and develop an individual technique for communicating with them. Information may be collected from public social media profiles and other public information systems where the law does not require judicial authorization. The authors are confident that the implementation of these systems is a matter of the near future. Thus, all legal and ethical risks of using this kind of digital assistant to the investigator must be resolved with the mandatory participation of a lawyer.
4 Discussion

The results of the study show that the causes of false confessions are quite diverse. They depend on many factors that develop in each case. In any case, a false confession is a psychological and legal phenomenon that justifies the examination of each piece of evidence by the court.

The problem of verifying information provided by a suspect always collides with the presets and stereotypes of the police and the court. This reveals his right to defense against the accusation. Only the application of a set of measures to confirm the reliability of the reported information allows us to declare a complete verification of the reported suspected information. The psychological methods are required for indications analysis at this stage [14].

Many causes of false confessions could be avoided by providing good legal protection for the rights of the suspect and by asking him to verify his information at the crime scene, or explaining spatial and temporal discrepancies.

5 Conclusion

Various sources of false confessions by suspects have been identified by the research. They reveal the most significant mistakes that are made by investigators, lawyers, jurors, judges and the suspects themselves. This cannot inspire confidence in the full provision of legal guarantees for the protection of the individual from unlawful conviction [15].

It is believed by the authors that information from a suspect should be subjected to detailed and complete verification even in the case of guilt admission by the last. A superficial approach to his interrogation, which is reduced to paperwork for the court, cannot guarantee an objective and legal hearing. Therefore, any interrogation of a suspect must be viewed as a communication process under the influence of stress, which can lead to a distortion of the meaning of the information provided.

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References

Choice of tactical methods of interrogation: comparison of the practice of Russia, the USA, and European countries

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Abstract. The use of interrogation tactics in the practice of investigating crimes in the Russian Federation, the United States of America, Great Britain, Poland, Slovenia are compared in the article. The scientific works of the last decade on the problems of torture, the use of false information, the polygraph (lie detector), self-incrimination of suspects are considered. Nowadays the psychological and linguistic foundations of interrogations and technical methods of their analysis and interpretation come to the fore among the many problems of organizing interrogations. The interrogation techniques that elicit information without violating the fundamental human right to be free from prosecution are of greatest value. It has been established that the suggestibility of people during interrogation has a negative impact on cognitive processes in a state of stress. This is the reason for the large number of mistakes made by the interrogated and the assessment of the information provided by them by the courts and the police. Based on the problems of choosing interrogation tactics, the authors propose to develop specialized sets of lawful and ethical interrogation techniques in different situations as one of the universal means of eradicating violations of the law and humiliation of human dignity in the investigation of crimes. For these purposes, it is necessary to develop and apply mechanisms for analyzing big data and using the results obtained in interrogation processes modeling.

Keywords: investigation, investigator, interrogation, communication, torture, self-incrimination, evidence, trial

1 Introduction

The changing social and cognitive landscapes currently taking place on our planet are making significant changes to the routine activities of crime investigation. Undoubtedly, the main reason for this shift in social relations is the digitalization processes. It is believed by the authors that here lies the main cause of the problems of both the entire process of organizing the investigation of crimes, and the particular problems of individual investigative actions. Among such particular problems, one should also include the issues
of reducing the effectiveness of traditional methods and techniques of verbal investigative actions, especially interrogation.

This state of affairs did not arise suddenly – it was preceded by changes in the approach of the courts to the acceptance and evaluation of testimony obtained during interrogation, as well as the widespread introduction into everyday life of various cognitive communication technologies adapted for use in commercial activities. These factors, having undergone scaling and introduction into the public consciousness through digital means of communication have changed the very perception of reality and the meaning of truth for achieving justice by procedural means of proof.

The activity of law enforcement agencies of different states focuses, primarily, on the development of updated methods and techniques for conducting interrogation. The study aims to compare interrogation techniques and methods in order to determine the most effective verbal strategies in new circumstances.

Innovative approaches are gradually changing the conditions for conducting an investigation, because the data analysis technologies being implemented contain great potential for the development of the entire field of criminal justice. According to the authors hereof, digital technologies for supporting tactical decision-making and combinations of these decisions should be inspired by evidence-based interrogation techniques that have been tested by court verdicts and public understanding of the ethics of justice.

2 Materials and methods

The purpose of the study is to establish patterns of application of interrogation techniques in different countries, as well as to find criteria for their effectiveness. The sources of objective data for the study are the materials of scientific reviews on the stated topics and proposals published on their basis to improve interrogation models depending on the current type of situation.

The methodological basis of the study is the methods of dialectics, logic, analysis, synthesis, induction, deduction. The results of the study are obtained using comparative and formal-legal methods, as well as the method of data content analysis.

3 Results

This study shows that the points of view of researchers in Russia and the states of Europe and the United States of America differ significantly on the problem.

An essential distinguishing feature of the US practice in conducting verbal communication is the question of the admissibility of using physical coercion to obtain evidence. Moreover, recent studies show that such actions lead to a significant number of suspects’ self-incrimination. Although various types of torture are the very first interrogation techniques in chronology, their effectiveness is denied today [1].

The use of torture as the main method of intensive interrogation technique is contrary to both the principles of law and morality, compels people to harm themselves and does not give them the opportunity for legal, psychological or physical protection. This technique goes beyond the scope of universal human ethics. Yet, is the use of torture an effective tool against terrorism? How justified are coercive means of extracting information from such a suspect?

American, Russian and European scholars note the fundamental impossibility of attributing the use of physical coercion to testifying as a legal and moral means of obtaining legal evidence. In Poland, the verification of information about the methods of interrogation
and the decision on the admissibility of proving the circumstances of the case is taken by the court according to a larger number of criteria, fixed mainly in the 1984 Convention against Torture and its reflection in national legislation [2]. Such evidence will not be accepted either by the court or by society, in which justice is the highest value. This is the unity of positions of researchers on this issue in all states [3].

Another actual problem of verbal communication in the investigation is the choice of means of verbal interaction to exclude false confession under the influence of mental coercion or lies. In this case, the psychological basis is the individual level of suggestibility and self-suggestibility of the interrogated person, which often causes problems with assessing the sincerity of testimony.

Russian researchers consider this problem through the ethical problem of the psychological reagent, its capabilities and limitations in use. A psychological reagent is perceived as information that does not meet the criterion of reliability, which is communicated to the suspect in order to cause his verbal or non-verbal reaction about his attitude to the event under investigation. The courts only verify the information received from the suspect during the preliminary investigation and question him about the methods of investigation for recording in the protocol of the court session [4].

According to American scientists, the essence of this problem lies in the psychological foundations for the formation of false confessions. In any case, if the accused confessed, the judge and jury must verify it by considering all the evidence in the case without such evidence. A procedural separation of the guilty plea from all other evidence is made and only the array of such remaining incriminating evidence is evaluated. A fairly common way to influence the position of the court and the jury in order to convince them of the use of lawful interrogation techniques is to conduct a video recording of the interrogation procedure during the investigation [5]. In Russia, a video recording of an interrogation is possible only when there are no objections from the participants.

Moreover, Russian researchers discuss the participation of an interpreter during interrogation and the related problems of conveying the meaning of testimony when translating from one language to another. In particular, a point of view is expressed about the four groups of tactics used, which differ depending on the degree of involvement of the interpreter in the tactical plan of the investigator [6].

In the field of linguistic support for interrogations, researchers from the UK pay special attention to the coincidence of linguistic styles of communication between the investigator and the interrogated. Focusing on the frequency of coincidences of words, phrases, and their semantic content, shows the presence of regular common properties of the participants in the interrogation. This leads to strong contact, but there are also frequent cases of false confessions or false reporting of verifiable facts [7, 8].

In general, the psychological support of interrogation, including the choice of means of communication, obtaining evidence from persons and further evaluating the legality of the results, is the most relevant area of research on this topic in Europe and the USA [9-11]. From a huge array of works of this kind, studies are devoted to the analysis of the problems of comparing the psychological techniques of extracting information from the accused by simultaneously comparing the available evidence [12, 13].

Socio-demographic characteristics and their implications for the selection of an interrogation program are also of interest to forensic psychologists and investigators in the United States. For example, it has been reliably established that, in addition to the interrogation techniques themselves, the interrogated investigator’s own conviction in the justice of the investigator plays an important role [14].

At the same time, Russian and Eastern European investigative practice as a whole pays attention not so much to the provisions of experimental psychology as discusses the issues
of recognition of test results using a polygraph (lie detector) as independent evidence and issues of its application in various aspects of law enforcement [15-17].

Attempts are being made to analyze the communicative tools of the investigator and the most suitable environment for the use of a particular technique. US scientists claim that there are sixteen interrogation techniques most commonly used by American investigators [18]. It is also proposed to fix the interrogation of the cellmate of the accused as a separate type of interrogation [19]. The authors believe that by giving a cellmate special procedural rights, the legislator will have to recognize this activity as one of the forms of a pre-trial cooperation agreement. In this case, the courts will check not only the legality of the evidence obtained in this way, but also the compliance with ethical standards in order to humiliate the human dignity of the suspect.

4 Discussion

Researchers on interrogation methods and techniques are trying to combine the most effective interrogation techniques, producing cognitive interrogation techniques far beyond the effectiveness of interrogation models in use today. The approaches of the accusatory direction and the direction of information accumulation are the working ones, however, the introduction of new methods requires a high degree of practical verification of the totality of each group of techniques [20].

Therefore, today the problems of finding techniques that exclude physical violence, direct or indirect verbal manipulations come to the fore. Naturally, problems should not be solved by actual trial and error, when there is a threat of bringing the innocent to justice. Here the authors see the need to create and apply modern means of computer modeling and analysis of the most appropriate interrogation techniques from the point of view of the psychological profile.

5 Conclusion

The article shows which areas of work are most relevant at present. In Russia and some Eastern European countries, research of the interrogation problems is focused on its technical support. In some other states of Europe, scientists prefer a deep study of the psychological and linguistic characteristics of communication during interrogation. It is significant that all researchers of the problems of interrogation techniques reject any possibility of torture and other methods of inhumane treatment of suspects.

The results of this research can be used to develop a working model of a test module that combines various interrogation techniques taken from the positive experience of international cooperation. The implementation of the concept of development of interrogation programs proposed by the authors hereof, if its effectiveness is proven in comparison with traditional interrogation techniques, will entail irreversible changes, first in the tactical support of the investigation, and then will lead to a change in procedural legislation.

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Counteracting the accusatory bias by criminal procedure and forensic means

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Abstract. The problems of criminal proceedings in Russia associated with the phenomenon of the so-called “accusatory bias” as a type of misconduct by individual judges and law enforcement officers are analyzed herein. The analysis and generalization were carried out based on the materials of criminal cases on corruption crimes, completed both by convictions and acquittals of Russian courts using the methods of comparative law (comparison with sources from the United States), statistical, sociological and other methods. Moreover, for the first time, conclusions were formulated about the need to introduce a special principle for the formation of scientific provisions and applied recommendations in forensic science – the principle of the inadmissibility of an accusatory bias. Its application by a forensic scientist-developer includes six elements, including the development and implementation of recommendations: on common facts and typical situations of illegal prosecution, non-criminal acts in a particular field of activity; on the prevention of typical mistakes and violations of the law, on the investigation of crimes committed by law enforcement officers as manifestations of an accusatory bias. To solve the identified problems, complex measures of a legal, socio-economic, organizational nature are required, as well as changes in scientific, theoretical, didactic approaches in the system of identified measures.

Keywords: accusatory bias, prosecution, defense, adversarial process.

1 Introduction

In terms of the fight against the totalitarian past of the Russian criminal process, quite often both scientists and practitioners have to deal with such a phenomenon in the criminal procedure activities of judges, prosecutors, investigators as the notorious accusatory bias. This dangerous manifestation leads to the appearance of investigative and judicial errors in criminal cases, which distorts the true essence of the administration of justice and conflicts with the purpose and principles of criminal justice.

Way back in the RF President’s message to the Federal Assembly of the Russian Federation for 2013, the court and law enforcement officers were asked to get away from
the “accusatory bias in law enforcement and judicial practice” [1]. Attention is also drawn
to this problem in the draft law on the introduction into the Code of Criminal Procedure of
the Russian Federation of the institution of establishing objective truth in a criminal case,
submitted to the State Duma of the Russian Federation at the suggestion of the Investigative
Committee of Russia (the draft law was submitted to the State Duma of the Russian
Federation by its deputy A.A. Remezkov and posted on the official State Duma website).

The authors thereof believe that, in its most general form, the accusatory bias consists in
ignoring by investigators, prosecutors and judges of evidence in favor of the accused, in
their unwillingness to check and take into account the arguments of the defense.

The purpose of the publication is to propose approaches to counteracting the accusatory
bias using the methods of the sciences of criminal procedure and forensics, as well as to
offer updated approaches to the process of teaching these two legal sciences as part of the
advanced training of existing criminal lawyers.

2 Materials and methods

The conceptual approaches of O. Ya. Baev, A.N. Khalikov, A.D. Nazarov (the co-author
of this article) and other scientists to the need to overcome the trend of accusatory bias in the
sciences of the anti-crime cycle are used herein as a methodological basis in terms of the
methodology for the formation of their applied developments. The formal-logical, system-
structural, statistical, sociological methods, as well as the methods of comparative law, are
used in the article. The conclusions presented in this publication are also based on the
empirical material obtained by two of the co-authors of this publication, A.D. Nazarov and
E.V. Gulina within the framework of their doctoral and candidate theses, respectively.

3 Results

To understand the essence of the accusatory bias, it is crucial to analyze the various
manifestations of this phenomenon in the criminal process.

One of the reasons for the phenomenon under consideration in the activities of the
investigator is the inclusion of him by the legislator in the number of participants in the
criminal process on the part of the prosecution. However, primarily, an investigator is a
researcher. His duties include the establishment of all elements of the subject of proof in a
criminal case, the collection, evaluation of evidence, both incriminating and justifying the
accused [2, 3]. He is obliged to establish the objective truth in a criminal case. Failure to do
so should be regarded as an accusatory bias in the activities of the investigator.

Investigators quite often take accusatory versions as the basis of the investigation,
ignoring others; give “overstated” qualifications to the act of the accused; when choosing a
preventive measure, they initiate detention without taking into account other preventive
measures; when carrying out procedural actions, they violate the rights and legitimate
interests of participants in criminal proceedings on the part of the defense, etc.

The mission of a defense lawyer is generally decorative in the modern Russian criminal
process. Art. 86 of the Code of Criminal Procedure of the Russian Federation states that the
defender is involved in the collection of evidence, but the documents, objects, etc.
submitted by him can be included into a criminal case and become evidence in the
procedural sense, when the subjects conducting the criminal process require them. Most
often, in response to their largely substantiated petitions, defenders receive standard
investigators’ decisions on full or partial refusal to satisfy them.

The most dangerous consequences of the accusatory bias are connected with the
activities of the court. According to practitioners, judges satisfy most of the appeals sent to
them by investigators. The court sometimes, without good reason, takes a person into custody, extends its term, forgetting quite often that there are other preventive measures besides the classic arrest. The phenomenon under consideration in the activities of the court is also manifested in its formal approach to the consideration of complaints of interested parties about actions / inactions, decisions of officials of criminal justice bodies in accordance with Art. 125 of the Code of Criminal Procedure of the Russian Federation. In line with reflections, it should be noted that officials of the criminal justice bodies receive, in response to their petitions, court decisions on conducting operational-search activities (hereinafter – OSA) with practically no problems. All this is also a manifestation of the accusatory bias – “a phenomenon, the existence of which is consistently denied by the bodies of preliminary investigation, prosecutors and judges” [4].

Studying foreign sources, the authors have not found a term similar to the accusatory bias in meaning. Many scientific works are concerned with more general negative phenomena – police misconduct, crime in the police [5]. Thus, in the United States, four studies have been conducted aimed at specific types of misconduct by police officers, serious violations of the civil rights of people by them. The results of the comparison show both important similarities and differences between police misconduct across several American police departments [6].

American scientists offer noteworthy methods of dealing with these negative phenomena. Thus, in one of the studies, it is proposed to actively use the so-called “civilian allegations” in response to police misconduct in order to identify and expose problematic police officers [7]. Such a practice would certainly be useful for Russia. However, such “civilian allegations” in our country would probably be called “massive civil lawsuits and the initiation of criminal prosecution against police officers by citizens”.

Similar but not identical studies have been conducted in the USA. For example, the negative pattern of police misconduct is opposed by the “theory of police integrity” [8].

When it comes to Russia, it should be noted that Art. 6 of the Code of Criminal Procedure of the Russian Federation “Appointment of criminal proceedings” postulates the most important principle, according to which criminal proceedings have as their purpose both the protection of the rights and legitimate interests of persons and organizations victims of crimes, and the protection of the individual from illegal and unreasonable accusation, conviction, restriction of its rights and freedoms (part 1). Here the legislator explains that the criminal prosecution and the imposition of a just punishment on the guilty correspond to the purpose of criminal proceedings to the same extent as the refusal to prosecute the innocent, release them from punishment, and rehabilitate everyone who has been unjustifiably subjected to criminal prosecution (part 2).

It would seem that criminology, as the main applied legal science in Russia, should be the first of the anti-criminal sciences to promote this principle. Unfortunately, this is not so. In this regard, A.N. Khalikov notes that in some publications on criminology, a line is drawn in full to develop only the first part of the purpose of criminal proceedings, while the second purpose is missed. “However the second appointment works on a par with the first!” [9].

4 Discussion

Prior to the presentation of the author’s approach, it is required to make two important methodological clarifications.

1) the authors share the opinion of A.A. Exarchopulo, who noted that the interest of forensic science in a crime, a criminal and his defender is due to the desire to create scientific tools that ultimately contribute to the knowledge of the truth in criminal proceedings [10]. That is, forensic science can be neither “accusatory” nor “defensive”. It
aims to reach the truth. Meanwhile, the defense lawyer, like his client, due to the requirements of Russian law, is not always interested in establishing the truth. Thus, scientists-developers in the field of forensic methodology and forensic tactics can and should develop applied recommendations of a protective nature, but only in order to establish the truth, in other words, to prevent the prosecution of the innocent.

2) The legitimate accusatory position, the interests of the prosecution and such a negative phenomenon as an accusatory bias should not be confused. The accusatory position is always based on the law, even if representatives of the prosecution use its vagueness, optionality, gaps and contradictions, actively apply the principle of offensiveness in the investigation, or vice versa – make concessions and compromises with the defense. The accusatory bias, in fact, is a manifestation of the improper performance of the function of the accusation.

For example, to overcome the accusatory bias, the authors propose a methodological approach that can be conditionally designated as “adversarial”. Let us illustrate it on the example of the process of creating one of the forensic methods for investigating corruption crimes. As a result of the study of investigative and judicial practice in criminal cases of criminal corruption in the field of higher education [11], many cases were identified where a negative trend of accusatory bias on the part of the prosecution against university employees and other participants in legal relations in the field of higher education is clearly traced.

Let us give examples of the manifestation of an accusatory bias in situations typical of Russian anti-corruption law enforcement practice. The first typical situation can be defined as a higher education employee receiving remuneration as a result of provocative and inciting activities on the part of operational officers during operational-search activities (hereinafter referred to as OSA).

Thus, citizen N. (a member of the Russian language examination board) was accused of taking a bribe in the amount of 5,000 rubles. The detention of N. was planned and carried out at the moment of receipt of money from the applicant’s sister. According to investigators, the bribe was given to N. for the highest grade for the entrance exam, on the basis of which the applicant could pass the competitive selection for a state-funded place. N. was acquitted by the verdict of the court, which, among other things, pointed out the following.

- legal grounds for conducting the OSA (interception of telephone conversations and an operational experiment) prior to the start of their conduct in relation to N. was not retrieval mode. An interesting excerpt from the verdict: “The allegation that Mrs. N. at the time of the decision (on the OSA – authors’ remark) extorts an illegal monetary reward ..., according to the court, is the assumption of the author of the decision ...”;
- the information set out in the decision to conduct the OSA was falsified by operational officers;
- at the same time, the sister of the applicant, even before the first meeting with N., secretly collaborated with the police [12].

The second typical situation can be defined as accusation of university executives of abuse of power and embezzlement of grants, other budgetary funds in situations where there is no criminal intent and real damage as mandatory signs of the specified elements of crimes.

Citizen N., a former vice-rector, a former director of the Internet education center of one of the universities, was accused of acting as part of a group of persons by prior agreement, for the purpose of illegal enrichment, she received funds under a grant for scientific research by the university staff using her official title. At the same time, she allegedly illegally issued a grant for university employees who were unaware of their inclusion in the executors, prepared documents for them, received wages for them, and also demanded and
received part of their salaries from some real executors under the grant. Her actions were qualified under Part 3 of Art. 159 of the Criminal Code of the Russian Federation, Part 1 of Art. 285 of the Criminal Code of the Russian Federation – several episodes [13].

When passing the judgment of acquittal, the court, among other arguments, pointed to:
- the absence of real damage suffered by the university and the state, since the conditions for granting the grant were fully met, the scientific research was carried out, the results were presented, approved by the grantor;
- the fact that N. was not an official, that is, the subject of the listed crimes, since only the rector had the authority to conclude relevant agreements, other organizational and administrative powers.

Criminal cases of this kind are often terminated during the preliminary investigation. The examples given are not individual cases, but manifestations of the patterns of the accusatory bias, which are widespread in law enforcement practice.

As a rule, the reason for the errors of the prosecution is that when making decisions to initiate a criminal case, the investigators are not always fully familiar with the features of the relevant type of activity of the university. Moreover, they are not always ready to predict the judicial prospect in a criminal case, taking into account “future” evidence and features of the qualification of such acts.

5 Conclusion

Undoubtedly, the situations given in the examples, taking into account the fact that they occur systematically, as a stable pattern, not only destroy people’s trust in the law enforcement system, but also discredit the state as a whole [14]. Complex measures of a legal, socio-economic, and organizational nature are required to solve the problem. However, in the system of such measures, changes in scientific, theoretical, and didactic approaches are also needed.

A special principle for the development of forensic methods and recommendations – the “principle of the inadmissibility of an accusatory bias” – is proposed by the authors. Its application consists in the development and implementation of the following scientific provisions and applied recommendations:
1. on typical, widespread non-criminal acts in a particular field of activity, which, as the analysis of practice shows, are often erroneously assessed by law enforcement officers as criminal;
2. on typical investigative situations and versions that ensure this – the human rights provision of the developed forensic investigation methodology;
3. on tactical operations of the type: “Checking the version of the innocence of a person, about self-incrimination”;
4. on the prevention and elimination of typical mistakes and violations of the law by law enforcement officers;
5. on the means and methods of work of lawyers-defenders in connection with the identification of their accusatory bias against the innocent;
6. on the investigation of crimes related to the accusatory bias in the activities of representatives of the prosecution. Similar studies are being carried out in the USA [15].

It should be emphasized that not only criminal law and criminal procedure, but also criminology, all other anti-criminal sciences, must join the fight against the notorious accusatory bias in law enforcement. It is advisable to carry out interdisciplinary developments, the basis of which is the proposed methodological approach.

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Tactical aspects of concluding a pre-trial cooperation agreement

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Abstract. Fast-track forms of criminal proceedings are common in many countries. The practice of their application raises lively debates. Attention is drawn to the inherent disadvantages of fast-track proceedings (imperfection of legal technique, direct or indirect deception of non-professional participants in criminal proceedings, violations of rights and legitimate interests of suspects, defendants, etc.). However, these forms of legal proceedings have positive aspects (saving time, labor costs, budget funds, etc.), which determine the mass practice of their application. Pre-trial agreement on cooperation provided for by the Russian criminal and procedural legislation (chapter 40.1 of the Criminal Procedure Code of the Russian Federation), being one of these forms, has proven to be a fairly effective tool in the fight against crime. The authors draw attention to the fact that the success of applying the pre-trial agreement on cooperation by the prosecution largely depends on the tactics of the investigator and other subjects of criminal prosecution. Attention is paid to typical variants of actions of the investigator who considers applying norms of chapter 40.1 of the Criminal Procedure Code of the Russian Federation in a criminal case as expedient when he: 1) directly indicates the possibility of the agreement; 2) convinces the suspect or the accused in the expediency of the agreement; 3) “pushes” the defense to initiate entering into a pre-trial agreement.

Keywords: pre-trial agreement on cooperation, defender, compromise, money laundering, security measures, imposition of punishment, investigator, tactical aspects.

1 Introduction

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The pre-trial cooperation agreement has proven to be quite an effective tool in the fight against crime during more than a decade of practical application. It is noted that some analogs of chapter 40.1 of the Criminal Procedure Code of the Russian Federation are widely used in foreign countries. For example, sumarissimo in Portugal, abbreviato in Italy, plea bargaining (deals with justice) in the United States of America, Canada, England and Wales, India, Pakistan, and many other countries. The widespread practice of fast-track proceedings does not mean that the implementation of the relevant rules of criminal procedure in different countries of the modern world is unequivocally positively perceived by law enforcement officials, attorneys-in-law, defendants, and victims, as well as legal scholars. Many of them raise issues related to deficiencies of legal technique [1, 2], direct or indirect deception of non-professional participants of criminal proceedings [3-5], violation of the rights and legitimate interests of persons subjected to criminal prosecution, victims [2, 6], etc. At the same time, it is hardly appropriate to speak only about the negative effect of the application of fast-track forms of criminal proceedings. According to several representatives of the legal community, such procedures, although have certain shortcomings, allow significant savings of resources and time of state structures involved in the application of criminal law to criminals in conditions of increasing budgetary deficit [7, 8]. Of course, there were various kinds of mishaps on the way of formation of the considered institute associated with misunderstanding of the law enforcer of the essence and purpose of a pre-trial agreement, but at present, the practice of applying 40.1 of the Criminal Procedure Code of the Russian Federation, in general, has been settled, cases of its application in the absence of grounds are rare. If the number of criminal cases considered by the courts with a verdict or termination of the case is compared to those in which a pre-trial cooperation agreement was concluded, the latter accounts for about 0.5% of the total mass annually [9]. This figure is significantly lower than the number of cases of grave and especially grave crimes annually considered by courts, including those committed as part of organized groups and criminal associations. This indicates the selectivity of the prosecution when concluding a pre-trial cooperation agreement. In this regard, it is interesting to consider the tactical aspects of the decision of the prosecution and the defense to apply the norms of Chapter 40.1 of the Criminal Procedure Code of the Russian Federation.

2 Methods

The authors thoroughly approached this task. The experience of work in the Investigative Committee of Russia and advocacy of three co-authors of this publication was used and summarized. The results of monographic studies of the authors, who devoted their works to the practice of application of norms of Chapter 40.1 of the Criminal Procedure Code [10, 11] were analyzed. The conclusions in this publication are also based on other scientific and methodological literature on the stated and related problems.

3 Results

The analysis and generalization of empirical and theoretical material lead to the conclusion that, in general, the prosecution decides on the necessity of concluding a pre-trial cooperation agreement, as a rule, in criminal cases where there are difficulties. Those may be in forming the evidence base (for example, when there are significant difficulties in collecting evidence confirming the commitment of crimes of previous years), in identifying and proving additional episodes of criminal activity (for example, in criminal cases involving the crimes of the previous years), or in identifying and proving additional
episodes of crime. Other factors may also influence the prosecution’s decision on the need to conclude a cooperation agreement. For example, the desire to reduce the time of the investigation and trial, to reduce the time and labor costs, etc. However, such factors are often of secondary importance.

Significant attention is paid to the person with whom the agreement is supposed to be concluded. This should be a subject, firstly, that possesses information of interest to the criminal justice authorities, and secondly, that is ready to cooperate with the prosecution. Besides, when considering the possibility to sign a pre-trial agreement on cooperation with a specific person being prosecuted, the counsel representing his/her interests, his/her professionalism, credibility, ability to compromise, etc. is also taken into consideration.

4 Discussion

In criminalistics literature, there is a position according to which it is necessary to carefully think over and implement the appropriate tactical operation in case the defense is interested in the conclusion of a pre-trial agreement on cooperation [10, 11]. In the authors’ opinion, its implementation is not always necessary (see, for example, the following variants of actions 1, 2). Without going into a discussion on this issue, the authors think it is permissible to pay attention to typical options of actions of an investigator who considers the conclusion of an agreement on cooperation advisable.

1. The investigator indicates the possibility of the conclusion of the agreement directly. This approach, in many respects, is typical for investigators who do not have a particularly great experience, as well as in multi-episode criminal cases, when it is expedient to conclude a pre-trial agreement with one of the direct perpetrators (participant of a criminal group or the one being part of the criminal environment and having information on the criminal activity of other persons), who wants to facilitate their situation as much as possible, sometimes directly declaring their willingness to cooperate with the investigation. For example, it could be a young woman who has children and due to life circumstances becomes one of the distributors of narcotic substances.

2. The investigator convinces the suspect or the accused person of the expediency of the agreement. This variant of actions is mostly typical for cases of deciding to conclude a pre-trial agreement with one of the direct perpetrators. It is typical to convince the person under criminal prosecution to decide to cooperate with law enforcement agencies. As a rule, the investigator focuses on the fact that if the criminal proceedings will be carried out with the application of the norms of Chapter 40.1 of the Criminal Procedure Code, the person who has concluded a pre-trial agreement can count on a whole set of benefits. Among the most significant of them are those related to:

– the assignment of punishment and its serving. In particular: the rules for assigning the punishment to a person who has concluded a pre-trial cooperation agreement and fulfilled its conditions (Part 2, Part 4 of Article 62, Articles 64, 73 and 80.1, Part 5 of Article 317.7 of the Criminal Code) and other regulations depending on the specific circumstances of the criminal case.

– the application of security measures: separation of the criminal case against the person who has entered into a pre-trial agreement into separate proceedings (Art. 154(1)(4), Art. Art. 317.4 of the Criminal Procedure Code of the Russian Federation); consideration of it separately from the consideration of criminal(s) case(s) in respect of other accomplices (Art. 316, 317.5 of the Criminal Procedure Code of the Russian Federation), including in closed proceedings (article 11 and paragraph 4 of paragraph 2 of article 241 of the Criminal Procedure Code of the Russian Federation); possibility to temporarily place the person in a safe place, change documents, change of appearance, etc.) [12].
If necessary, other advantages which can be used by a person who has concluded a cooperation agreement may be explained. Those include mandatory participation of a defender, exemption from payment of procedural costs, the possibility of electing a milder measure of restraint in case of refusal to resist investigation, etc.

The authors note that in some cases, concerning 1 and 2 of the above options, the investigator is assisted by a defender in convincing the suspect or the accused of the need to conclude a pre-trial agreement.

3. **The investigator “pushes” the defense to make sure that the initiative in concluding a pre-trial agreement comes from it.** In this case, the defense acquires a tactical advantage and may seem to make concessions to the defense, having more opportunities to “bargain” with it, including negotiating the terms of the pre-trial agreement. The described “pushing” can be successfully implemented mainly when the suspect or the accused understands: a) that the investigation has indisputable evidence (or it will be unambiguously received in the near future) of his (and accomplices’) criminal activity; b) there is a possibility of conclusion of a pre-trial agreement with one of the accomplices; c) the advantages provided by the rules of Chapter 40.1 of the Criminal Procedure Code of the Russian Federation and their implementation can significantly improve his position [13, 14].

This option of investigator’s actions is the most difficult in preparation and implementation. Requires special attention both at the stage of conclusion of an agreement and during the subsequent investigation. It is necessary to predict the possibility of alleged conflict-free behavior of the defense [15]. That was the case when the crime lord I. was detained. Initially, he was accused of committing several crimes (robbery, extortion, drug trafficking) as part of an organized criminal group. One of the defendants in the criminal case who signed a pre-trial cooperation agreement reported the involvement of I. in the murder of another crime lord and pointed out a witness to the crime. However, members of the criminal group I. belonged to put pressure on this witness, and he was unable to testify about I.’s involvement in the murder, which would have been recognized as consistent and reliable (he confused his testimony, reported contradictory information, referred to forgetfulness). As a result, the conditions of the pre-trial agreement were formally fulfilled and there were no grounds for its termination, but in fact, the desired result from its conclusion was not obtained (the information became known to one of the co-authors as part of his legal practice).

The variant of investigator actions described in this paragraph mainly takes place when it is advisable to conclude a pre-trial agreement with one of the leaders of an organized criminal group (criminal community), and his interests are protected by a highly qualified defender (or several lawyers).

5 Conclusion

The given variants of actions are typical. They are set forth by the authors unrelated to the category of crimes. That is why it seems expedient to develop criminalistic support of the conclusion of a pre-trial agreement on cooperation in various categories of criminal cases (murders, corruption crimes, encroachments related to illicit drug and weapon trafficking, and others) and active introduction of such criminalistic recommendations into law enforcement activity.

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Fraud in the insurance industry: criminological, criminalistic and civil aspects

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Abstract. Insurance fraud is one of the most common types of fraud in the world. The explanation for this is the nature of the insurance institution, the essence of which is to distribute risks at the expense of insurance funds created by insurers. Insurance companies with stable monetary assets become attractive for criminal encroachment. The legal basis of relations in the field of insurance is a contract, the doctrine of which goes into the field of civil law. Therefore, when forming a mechanism for preventing insurance fraud, it is necessary to take into account not only the specifics of a criminal’s personality, the specifics of economic and social situations, but also interdisciplinary connections. This study analyzes the factors of insurance fraud and suggests measures to prevent it, based on the identification of problematic aspects of the conclusion and execution of an insurance contract. No less important in the prevention of insurance fraud is the creation of organizational and informational prerequisites for the conclusion and execution of an insurance contract.

Keywords: crime prevention, insurance fraud, types of insurance fraud, portrait of insurance fraud, insurance contract

1 Introduction

The development of society, the complication and expansion of types of economic activity inevitably entail the emergence of new types of crimes, the effectiveness of the fight against which requires a careful study of the object of criminal activity, the determining factors and conditions for the development of crime in a particular area.

Insurance fraud in recent decades has acquired significant proportions both within the international and domestic space. In Russia, according to experts, fraudulent payments average 10-15% of the total amount of insurance payments. According to the information project “Insurance: Public Expertise”, the damage from insurance fraud in the second quarter of 2019 amounted to 3.5 billion rubles [1]. In 2016, insurers identified 125,000 fraud cases worth GBP 1.3 billion, according to the Association of British Insurers. A similar number of fraud cases remain undetected [2]. In the USA, the insurance industry is made up of over 7,000 companies that collect over USD 1 trillion in premiums each year. Moreover, the total amount of insurance fraud is estimated at more than USD 40 billion a year [1]. In Russia, insurance fraud is expected to grow by 17% in 2021 compared to 2020 [3].

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The size of the financial flows circulating in the industry is one of the factors behind the increase in insurance fraud cases. Financial flows are formed by creating insurance funds at the expense of policyholders’ contributions. According to a number of civilists, this mechanism reflects the essence of insurance [4]. At the same time, fraud in the insurance industry destabilizes the insurance services market, leads to a decrease in the profits of insurance companies and negatively affects the conscientious performance of their duties. The consequences of insurance fraud are felt not only by the immediate victims, but by all potential policyholders, since the costs of fraudulent insurance benefits are passed on to customers, driving up the prices of basic products such as life insurance, civil liability of vehicle owners, home insurance.

Thus, insurance fraud is certainly socially dangerous. In this regard, criminological research on insurance fraud will contribute to an in-depth study of the problem. As is known, insurance, as a type of economic activity, is mediated by the civil law provisions on an insurance contract. Taking into account the legal nature of an insurance contract, the specifics of its conclusion and execution is significant in developing a methodology for preventing fraud in the area under consideration and creating civil law and criminal law mechanisms that ensure the protection of the right to receive high-quality insurance services.

Traditionally, the definition of the concept of insurance fraud is in the field of criminal law. The legal definition of insurance fraud is enshrined in Article 195.5 of the Criminal Code of the Russian Federation [5].

According to this provision, insurance fraud is the theft of someone else’s property by deception regarding the occurrence of an insured event, as well as the amount of insurance compensation payable in accordance with the law or the contract to the insured or another person. The inclusion of this corpus delicti in Russian criminal law testifies to the recognition of the public danger of such acts. It should be noted that a similar practice has long existed in foreign countries. Thus, in the Criminal Code of the Federal Republic of Germany, fraud involves the actions of a person who, intending to obtain an illegal property benefit for himself or a third party, causes damage to the property of another person by misleading or supporting the delusion, asserting knowingly false facts or distorting or hiding true facts [6]. In addition, a number of provisions relate directly to insurance.

For example, Paragraph 263 refers to particularly severe cases of fraud when a person falsifies an insured accident after he or another person, for this purpose, sets fire to a thing of significant value or destroys it in whole or in part by arson, or sinks a ship or lands it aground.

Paragraph 265 of the Criminal Code of the Federal Republic of Germany provides for criminal liability for abuse in insurance. This provision enshrines that a person who damages a thing insured against loss, damage, deterioration of its suitability, loss or theft, impairs its suitability, hides or transfers it to another person in order to obtain for himself or a third party the benefit from its insurance shall be punishable by imprisonment for up to three years or a fine.

Australian law defines fraud as “the unfair (dishonest) gain or loss by deceit or other means” [7]. In Australia, there is a particular focus on health insurance fraud. Examples of fraud in this area are as follows: charging for services that were not provided; upcoding, i.e. billing for a higher level of service delivery when a lower level was actually provided; unbundling – i.e. providing a separate bill for each service when they should be billed together; personal data falsification [7].

In Russia, due to the low level of development of voluntary medical insurance, cases of fraud in this area are less common. However, fraud cases in the field of compulsory health insurance are on the rise.
In the USA, theft of insurance premiums is one of the most common fraud cases in the insurance industry. Typically, an insurance agent does not send insurance premiums and instead keeps the money for personal use. Another common fraud scheme involves selling insurance without a license.

The peculiarity of fraud in the field of insurance and its difference from other types is that an offender, through breach of trust or deceit, violates the protection of the property interests of citizens and legal entities in the event of the consequences of an insured event at the expense of funds that are formed from the insurance premiums they paid. Thus, an offender receives an illegal material benefit, thereby causing property damage to legal insurers, insured persons, beneficiaries, etc.

In Russia, the most common fraud is in the sector of compulsory third party liability insurance of vehicle owners.

The most common types of fraud are as follows: the use of stolen insurance policy forms; intentional damage to forms and their write-off – “policy for rent”; understatement by an insurance agent of the premium amount under the policy; the use of counterfeit forms and seals; adding additional drivers to the policy without notifying the insurance company; falsifying the circumstances of a road accident or a damaged car; staging accidents; provocation of a road accident (“set-up”); double insurance and double indemnity; issuance of policies after a road accident; falsifying the results of technical expertise; falsification of medical examination results. Such fraudulent actions not only entail a violation of the rights and legitimate interests of participants in insurance relations, but also level the goal of the institution of civil liability insurance of vehicle owners, which, according to Yu.B. Fogelson, is to guarantee compensation for harm to the victim and protect the interests of vehicle owners [8]. It can be concluded that the increase in crime is associated with the fact that one or another type of insurance is included in the number of compulsory ones, as well as with the frequency of occurrence of insured events.

Insurance fraud is committed at all stages of the dynamics of an insurance contract: at the conclusion of an insurance contract, during its validity period and upon its execution.

That is why, in order to prevent and combat fraud, it is important that the civil law provisions contain clear procedures for concluding a contract. However, some rules for concluding an insurance contract only contribute to abuse in this area. Thus, Article 945 of the Civil Code of the Russian Federation [9] establishes that when concluding a personal insurance contract, the insurer has the right to conduct a medical examination of the insured person to assess the actual state of his health. These procedures, necessary for the correct assessment of insurance risks, are not mandatory for the insurer, which allows for distorting information about an insurance object and makes it easy for a fraudster to stage an insured event. The authors assume that in order to eliminate possible abuses, it is necessary to consolidate the mandatory procedure for conducting a medical examination of insurers when concluding personal insurance contracts. Such measure will reduce the number of cases of providing false information by the insured when concluding a contract.

2 Materials and methods

During the study, an analysis was made of the views and approaches available in domestic and foreign science to the institution of an insurance contract and abuses of the parties, including those of a criminal nature, during its conclusion and execution. A comparative legal method allowed a systematic approach to the problem under study, using the legislation of foreign countries, which made it possible to formulate general approaches to the prevention and investigation of crimes in the field of insurance.
3 Results

Based on the study of the experience of legislative regulation of an insurance contract in foreign countries, the importance of implementing the principle of utmost good faith at the stage of concluding an insurance contract is substantiated to minimize fraud cases. This principle is manifested in the requirements for the provision of complete and reliable information. In order to reduce fraud cases, the article argues for the need to introduce a procedure for mandatory verification of the authenticity of the documents presented when concluding an insurance contract and a mandatory medical examination of the insured when concluding personal insurance contracts. The inevitability of the consequences of deviation from the principle of utmost good faith as a measure to prevent insurance fraud should be embodied in the civil law provisions in the form of the right of early unilateral termination of an insurance contract.

The authors argue for the conduct of training activities among employees of insurance companies in order to improve professional skills for detecting fraud, explain the importance of creating a unified database of unscrupulous policyholders and insurers in order to accumulate information about the most malicious cases of abuse, and show the importance of competent organization of internal control measures in insurance companies. It seems that the proposals made will help reduce the level of insurance fraud and contribute to the progressive development of the insurance market.

4 Discussion

To ensure the legality of an insurance contract and prevent fraud in this area, it is significant to promote the ideas of good faith at the regulatory level. Article 1 of the Civil Code of the Russian Federation enshrines the general requirement that in establishing, exercising and protecting civil rights and in the performance of civil obligations, participants in civil matters must act in good faith. This principle is embodied in the rules of Article 943 of the Civil Code of the Russian Federation that when concluding an insurance contract, the insured shall inform the insurer of the circumstances known to the insured that are essential for determining the likelihood of an insured event and the amount of possible losses from its occurrence.

The obligation to act in good faith applies to all parties equally and is valid for the entire duration of the contract. Information of significant importance to be communicated to the insurer is the information that may affect the insurer’s actions in assessing the degree of risk and at the conclusion of a contract – the contractual terms, the amount of insurance payments, and will also allow the insurer to assess the actual amount of losses. Failure to provide or provision of distorted information makes it possible to qualify such undesirable, or rather dishonest, activity as “abuse of an insurance contract” [10].

In foreign countries, the principle of good faith plays a significant role in the conclusion and execution of an insurance contract. For example, in common law countries, relations in the field of insurance are based on the principle of utmost good faith, known since Roman law as “ubierrima fidei”, which translates as “full trust”. This principle is rooted in English law and is regarded as a fundamental principle of insurance law throughout the world. The doctrine of utmost good faith requires that persons participating in negotiations on the conclusion of an insurance contract disclose all necessary information to other participants in the negotiations [11].
Initially, the obligation of maximum good faith under the common law applied only at the pre-contractual stage. Today, in many countries that have adopted the principle of utmost good faith, this obligation is maintained as long as the relationship between the insurer and the insured exists, and the application of this doctrine extends to the exercise of contractual rights and the processing of claims.

In England, the concept of ultimate conscientiousness is used to characterize the actions of participants in long-term contracts, for example, insurance contracts, and imposes on them the requirements to be decent and honest with each other [12].

In New Zealand, they also apply a doctrine of utmost good faith in insurance, where it is seen as a tool for balancing the interests of the parties and equalizing their property status. It is assumed that the insured is likely to be economically and emotionally vulnerable and will need to rely on the insurer for fairness and reasonableness. Conversely, the insurer has considerable discretion in assessing its claims and the extent of liability to the insured person. The application of this concept in the process of satisfying claims is especially relevant. Thus, in some cases, when delaying the process of paying out insurance compensation, insurance companies, abusing their powers, offer payment in a shorter time, but in a smaller amount. Considering disputes over such payments, the New Zealand courts primarily evaluate the good faith of the parties to the contract [13].

The authors assume that the signs of deviation from the principle of good faith revealed during the execution of the insurance contract can serve as a basis for checking the fact of fraud. Fraudulent activities will always be dishonest. Therefore, in order to prevent crimes in the field of insurance, it is necessary to include in the Civil Code of the Russian Federation a provision for the possibility of unilateral termination of an insurance contract at the insurer’s initiative in case of establishing the facts of reporting false information that may affect the illegal enrichment of the insured.

The characteristics of personality of an insurance fraudster are significant for understanding the effective mechanisms for its prevention.

A wide range of subjects involved in the commission of fraudulent activities should be noted.

Studies conducted in the UK have shown the willingness of both “ordinary” people and members of the middle class to take part in various types of insurance fraud [14].

In science, it is noted that an insurance fraudster has the ability to convince, the ability to inspire trust or respect, adaptability and flexibility, the ability to work with information, plan and think over everything to the smallest detail. The main motive of fraudsters is self-interest with the purpose of enriching themselves. To achieve this purpose, they forge documents, stage an insured event, cause deliberate harm to the property, life and health of the insured. Fraudsters often have psychological abilities, acting talents. A fraudster is usually wealthy and owns significant property. M.S. Zhilkina identified four main psychological types of insurance fraudsters. These include an actor, a brawler, a bore and a random fraudster [15]. In order to prevent crimes committed by fraudsters in the field of insurance, it would be advisable to train employees in order to analyze fraudsters’ behavior, so that at the stage of concluding an insurance contract it would be possible to prevent such a crime. The contact time of an insurance company representative with a fraudster is short, therefore it is important that employees are professional enough to recognize suspicious activity almost at a glance. Fraud management training seminars and intensive courses have been found to be effective in helping to identify fraudulent behavior in the insurance industry.

The reverse side of this problem is found in cases where a criminal is directly an employee of the insurance company. A significant measure in the fight against insurance fraud in such cases will be the competent organization of the system of internal control over the employees’ activities and ensuring the transparency of their actions.
The system should be organized in such a way that in the situation of making a decision to commit a crime, an employee understands the degree of probability of detecting the fact of fraud. Thus, it is necessary to create situational preventive measures, the main function of which is “adjusting the formation of a decision to commit a crime through external management of circumstances” [16].

The most dangerous fraud is personal insurance fraud. The legislator enshrined in Article 927 of the Civil Code of the Russian Federation that a personal insurance contract is public in accordance with Article 426 of the Civil Code of the Russian Federation. The insurer does not have the right to refuse to conclude a contract with an insured person. Such a refusal may be challenged in court. In addition, in personal insurance, double insurance is possible, which allows receiving payments for one insured event in several insurance companies. These circumstances motivate fraudsters to commit deliberate actions that harm their health. In case of double insurance for one insured event, i.e. for the same fraudulent action, one can receive an insurance payment from several insurers at once.

There is also an increase in insurance fraud in the field of vehicle insurance, fraudsters create fraudulent schemes for OSAGO (compulsory third party liability insurance of a vehicle owner) and CASCO (voluntary vehicle insurance) contracts. This is due to the significant share of this type of insurance among all other types. The creation of a unified database of unscrupulous policyholders in order to accumulate information on the most malicious cases of abuse will contribute to the reduction of fraud in the conclusion and execution of these types of insurance contracts. It should be noted that the establishment of centralized anti-fraud insurance bureaus, which functions, in addition to collecting information, should include interaction between various authorities and services, is recognized as one of the effective tools for preventing criminal fraud in the insurance industry [17].

In foreign literature, crime in the field of insurance fraud is referred to as the so-called “white-collar crime” [18]. An insurance fraudster is often a professional in his field, possessing insider information and thoroughly knowing the features of insurance procedures. In this regard, the work of security services of insurance companies is of particular importance, which, subject to the diligent fulfillment of their obligations, can reveal “clients’ criminal intentions already at the stage of an attempt” [19]. Fearing for their reputation, many insurance companies withhold information about the facts of fraud, however, informing is one of the keys to a successful fight. In one of his works on the problems of fraud in the insurance industry, F. Bavi notes that the lack of information is one of the reasons for the flourishing of fraud in the insurance industry. The scholar notes that in order to prevent this type of crime, it is important not only to make the statistics of fraudulent crimes in insurance transparent, but also to encourage insurance companies to competently conduct a policy of informing customers about detected cases of fraud and their consequences [20]. Such actions will not only increase the literacy of the population in insurance fraud matters, but also be familiar to potential fraudsters, indicating the inevitability of punishment.

Certainly, these measures should be supported at the level of legislative acts. For this purpose, it is necessary to consolidate the obligation of insurance companies to notify law enforcement agencies of actual cases of fraud committed. The proposals made in science to borrow the positive experience of Germany should also be supported, since there is a rule that an insurance company, upon detecting signs of fraud, has the right to suspend payment for six months until all the facts are clarified and an investigation is carried out [21].

One of the modern trends is the digitalization of all spheres of life, including the conclusion of an insurance contract.

E.L. Sidorenko rightly notes that “the obvious increase in insurance fraud corresponds to the general trend of increasing the number of “intellectual crimes” [22]. Insurance fraud
is also expanding into cyberspace. Currently, there are more and more fraudulent websites that pretend to be well-known large insurance companies. Thus, subjects with good technical knowledge are also involved in committing this type of crime. Consequently, insurance companies must have a staff of specialists in various fields: accounting, law, computer technology. By the way, foreign literature has long drawn a parallel between the number of cases of fraud in individual insurance companies and the level of staff qualification [23]. Moreover, high technologies can also be used to prevent insurance fraud. Currently, there are studies on automatic fraud detection using learning neural networks [24].

In order to prevent fraud in the insurance industry, the idea of introducing the institution of insurance detectives should also be supported. In world practice, such experience has existed for a long time and is recognized as a necessary element of insurance security and counteraction to insurance fraud [25]. In foreign countries, insurance detectives are either employee of insurance companies or private detectives involved in investigating a specific case [26]. In the Russian Federation, private detective activity is “non-state law enforcement activity carried out by non-state (private) detective structures” [27].

The authors consider it necessary to consolidate at the legislative level the powers of private detectives to establish the facts and causes of occurrence of insured events, in order to form an evidence base and reduce the burden of law enforcement agencies in this segment of crimes.

5 Conclusion

Fraud is expressed through a combination of three elements: misrepresentation of information; intention (purpose) to deceive; its goal is to obtain illegal benefits. Measures to prevent fraud in the field of insurance should include measures that take into account the specifics of an insurance contract and its civil law regulation.

In order to prevent and combat fraud in the insurance industry, it is necessary to do as follows:

Firstly: to organize a unified information service to combat insurance fraud.

Secondly: to create a single database of policyholders, insured events, payments to unscrupulous clients, as well as insured cars participating in fraudulent schemes, since fraud with vehicle insurance contracts is the most numerous.

Thirdly: to impose on insurance companies an obligation to verify the authenticity of the documents provided when concluding an insurance contract. When concluding personal insurance contracts, insurers must conduct a medical examination of the insured.

Fourthly: it is necessary to consolidate the obligation of insurance companies to notify law enforcement agencies of the facts of fraud committed.

Fifthly: in order to reduce fraud cases, to enshrine in the civil law provisions on an insurance contract the possibility of its unilateral termination in case of revealing policyholders’ dishonest behavior (providing false information, committing intentional actions that contribute to the occurrence of an insurance event, deliberate overestimation of the value of an insurance object, etc.).

In the authors’ opinion, the above conclusions and proposals will contribute to the prevention of crimes committed by fraudsters in the insurance industry, as well as reduce the level of crime in general and develop a healthy insurance market.

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Pre-expert verification of signatures using the NSP dataset

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Abstract. The article discusses a scientific and technical experiment to develop an intelligent signature verification system. Classification of forged signatures includes three types: auto-forgery, simple and skilled forgeries. The research was carried out in the method of offline verification of signatures, in which the subject of study is the resulting graphic image of a handwritten signature. Comparison of the qualitative and quantitative indicators of the main existing datasets with handwritten signatures, including CEDAR, MCYT, GPDS-960, BHSig260, The Uyghur signatures database is given. The author describes the structure and method of collection of the NSP dataset, which is the database of the experiment. The dataset includes the original signatures of 606 people and the corresponding false signatures. The total number of objects in the dataset: 104991. The process of developing a system for pre-expert verification of signatures is described, including, in addition to collecting a dataset, the stages of constructing a hypothesis, training the system, and validating learning outcomes (the last two stages can be repeated many times). The main elements of the graphical interface of the corresponding software are presented. The features of the perception of the results of issuing an artificial intelligence system by a person are considered. The conclusion is argued that systems of this kind are recommendatory, and their decisions are orienting, but not evidentiary.

Keywords: signature verification, NSP dataset, signature recognition, signature forensics, artificial neural networks, machine learning

1 Introduction

One of the directions of modern forensic research in the field of digital intelligence is to study the possibility of their introduction into various procedures implemented by participants in criminal proceedings. It seems that the effectiveness of such an implementation directly depends on the depth of detail of the operation: it makes no sense with the current level of technology to attempt to teach a machine to make any procedural documents, but an intelligent system can cope with the same type of documents. The present article is devoted to another direction, which is at the junction of expert and investigative activities, and to an interesting civil law community: the possibility to automate the distinction between authentic signatures and fake ones.

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2 Materials and methods

The methodology of this study suggests that forged signatures can be differentiated into three types: auto forgery, simple and qualified forgeries. In the first case, the signature holder is the executor; the relevant action is taken to subsequently refuse to recognize a document containing this requisite as properly signed (for example, to relieve himself of potential responsibility for signing an accounting document, which is evident in a criminal, civil or arbitration case). Simple and qualified forgeries are performed by persons who have information about the identity of the subject whose signature is being forged and a clear example of his signature. In turn, qualified, as opposed to simple, are characterized by the fact that their performer has special knowledge and skills, for example, artistic or forensic. The existing point of view, according to which simple forged signatures are made without a visual representation of the original [1], is fundamentally wrong: in practice such cases do not occur, as such falsification can hardly mislead anyone: it is impossible to simulate a person’s signature exactly enough by his name alone, proceeding from the essence of this process.

Automated signature recognition is currently divided into two disciplines: online and offline verification. In the first case, the object of study is not so much the signature as a graphic image, but rather the process of its execution. Thus, the degree of pressure, the angle of the writing instrument, the tempo, the speed of the signature, and other attributes are recorded in the online method. Fixing in this case takes place using the display, or it is supposed to record the process of signing on a video camera. The offline method is more in line with the realities of handwriting studies: only the graphic image of the signature as a complete requisite of an official document is to be processed. The study described in this article was conducted using the offline verification method.

Projects of automated verification of handwritten signatures have been implemented with varying degrees of success since the late 1980s [2, 3], but the greatest results have been achieved in recent years when such a task has shifted from the interest of mathematicians and programmers to the criminalistics subject area. The main works in this area belong to L. G. Heifmann, R. Saburin, and L. S. Oliveira [4]. In Russia, studies of this kind, in addition to the works of the author of this article, were devoted to the dissertation of A. N. Okhlupina [5].

A study of the possibilities of automated signature verification involves two necessary elements: a method and an object. Classical and modern approaches to the development of intelligent systems are used as verification methods: support vector machines method, hidden Markov model, deep learning with artificial neural networks. The applied part of this study was carried out with the use of the latter. The object for training intelligent systems of this type is datasets – structured datasets (in this case – images of signatures). As part of this study, the “NSP” dataset was generated – the largest existing database containing human-made (rather than automatically generated) signatures. A comparison of the qualitative and quantitative characteristics of the main existing datasets is shown in Table 1.

Note that the dataset volume directly affects the subsequent accuracy of the intelligent system.

3 Results

The NSP dataset has been collected since 2016 and so far includes sets of signatures from 606 people, each consisting of 56 genuine signatures and 112 to 224 corresponding forged signatures.
Original signatures were taken from respondents on two paper forms, each with 28 signature boxes and fields for information about the signer (name, age, and preferred hand to sign). This number was due, among other factors, to fatigue: most respondents were tired at the end of their signatures, they lost focus, which led to less control over the accuracy of their movements, making the signature more automatic, thereby increasing the variability of the resulting handwriting material.

**Table 1. Comparison of basic offline signature datasets**

<table>
<thead>
<tr>
<th>Dataset name</th>
<th>Writing system</th>
<th>Number of respondents’ signatures</th>
<th>Type of signatures used</th>
<th>Number of signatures (genuine/forged)</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSP</td>
<td>Cyrillic alphabet</td>
<td>606</td>
<td>natural</td>
<td>104,991 (33,988 / 71,003)</td>
<td>Russia</td>
</tr>
<tr>
<td>CEDAR [6]</td>
<td>Latin alphabet</td>
<td>55</td>
<td>natural</td>
<td>2640 (1320 / 1320)</td>
<td>USA</td>
</tr>
<tr>
<td>MCYT [7]</td>
<td>Latin alphabet</td>
<td>330</td>
<td>natural</td>
<td>16,500 (8250 / 8250)</td>
<td>Spain</td>
</tr>
<tr>
<td>GPDS-960 [8]</td>
<td>Latin alphabet</td>
<td>960</td>
<td>generated</td>
<td>51,849 (23,049 / 28,800)</td>
<td>Spain</td>
</tr>
<tr>
<td>BHSig260 [9]</td>
<td>Indian Writing (Hindi and Bengali)</td>
<td>260</td>
<td>natural</td>
<td>14,040 (6240 / 7800)</td>
<td>India</td>
</tr>
<tr>
<td>The Uyghur signatures database [10]</td>
<td>Uyghur writing</td>
<td>500</td>
<td>natural</td>
<td>(17400 / 7400)</td>
<td>China</td>
</tr>
</tbody>
</table>

Forged signatures were prepared in a simple and qualified manner. Each executor of the forged signatures was given both sheets with the originals. Only left-handed people imitated left-handed signatures. The performer chose the specific signature for the imitation out of the 56 submitted. Forged signatures were also made on forms of 28 cells, each performer filled out 1 such form. Accordingly, there were 112 to 224 forged signatures from a group of 4 to 8 people for 56 original signatures from 1 person. False signatures were produced without the use of special technical means and methods, such as a plotter, copy paper, wet copying, background lighting, etc.

The signature sheets (both original and fake) were then scanned at 600 DPI resolution, manually separated into digital images with individual signatures. Cropping was done at the outermost points of the caption, thereby minimizing the background space. The resulting mobile application handles uploaded original and disputed signatures similarly.

Images of the sample signatures that make up the dataset are shown in Fig. 1. Note that with this visual perception of big data, a person automatically begins to identify patterns, even if he has no relevant specialized knowledge.

The main hypothesis of the study, which is situated at the junction of forensic and computer sciences, is as follows: an image of a forged signature made without the use of special technical means and methods will in any case have several differences from the original one. Original signatures have varying degrees of variation from person to person. At the same time, the more stable are the general and private attributes of a signature, “the less their variation, the more significant they are for the reflection of the properties of a particular handwriting” [11]. When analyzing a large number of signatures, the average value of this variation can be established, so that a certain “normalized state” can be formed for any individual signature, reflecting at the same time most of its private attributes. The normalized state of the forged signature will be different from the normalized state of the
original signature. With experience, the artificial neural network-based system must learn to distinguish a genuine signature from a fake one by comparing a reliably authentic with a disputed one.

Fig. 1. Samples of NSP dataset signatures.

This project uses the convoluted method of artificial neural networks. Such topology allows analyzing the image of the signature in layers, from particular features of the graphic image to more abstract details, and further to even more abstract details up to the selection of the final image of the signature. In this case, the network calibrates itself, and itself produces (taking into account the basic settings – weights set by the developer) a hierarchical system of essential and insignificant features. In addition, an experiment with the use of so-called transformer nets is conducted. A brief description of this method can be presented as follows: the graphic image is divided into small sections of a size set by the developer. Each section is fed into the artificial neural network (transformer) as a “word”, supplemented by a description of its position in the original object. Thus, transformer networks essentially link computer vision technologies (within which the described project is implemented) with language processing technologies.

The learning process can be single (in the case of exact algorithms), but the best results are achieved by multiple repetitions of approaches (iterative algorithms). We can say that the network “looks through” the entire volume of the submitted training dataset in forward and reverse order. Each such pass is called iteration. The full view (two iterations) is called an epoch. The training of an artificial neural network usually involves several tens or hundreds of epochs.

In this example, the system is presented with a pair of signature samples, one of which is always original, and the second can be both original and forged. In this case, the signature property (authenticity or falsity) is known to the system in advance. This operation is repeated several hundred thousand times. As a result, if the initial parameters have been set correctly, the system, based on computer vision, learns the variation features of signatures made by one person and the differences that appear between genuine and forged signatures, whereby, just as in the human body “the actualization of organic or
orientational states of need, creates a strong focus of excitation in the brain, forming stable connections with them”, the artificial intelligence system learns to recognize objects offered to it, including by identifying hidden relationships and patterns, and as experience is gained and errors are corrected by discarding ineffective approaches (evolutionary development of the network) increases its accuracy and error tolerance. During training, if necessary, there is an additional adjustment of the learning algorithm or adjustment of the dataset (usually by removing heterogeneous objects to the total array) [12].

Next is the validation (verification) of learning outcomes. The artificial neural network has tasks similar to those that were solved during its training, but the “right answers” are not known to the system. In the studied example, verification is carried out by presenting the network with two sample signatures, one of which is authentic, and the authenticity of the second needs to be verified. In this case, the evaluation of the adequacy of the training results to the set objectives should be based on examples not included in the training array, because the performance of the artificial neural network can only be tested in conditions as close to the “field” as possible.

Assessment of the effectiveness of training is carried out in terms of several indicators, the main of which are the so-called accuracy (precision) and correctness (accuracy). The first reflects the repeatability of results, that is, an artificial neural network showing highly accurate results repeatedly solves the tasks assigned to it with the same (or similar) outcome. Correctness, in turn, implies that the results of validation correspond to the objectives set by the developer.

Achievement of sufficiently high accuracy and correctness excludes random high achievements, which allows such a system to be implemented in practical conditions and not only in scientific experiments.

The antipode of high results is the errors made by the artificial neural network. They can arise from the incorrectness of certain weights for training or inaccuracies in the elements of the processed data, including heterogeneity or other incorrectness of the input materials (dataset), or as a result of generalization or retraining of the network. Generalization refers to the oversimplification of an intelligent system so that it does not reproduce small dependencies and always produces average results. When retraining, the artificial neural network has an unnecessarily complex structure and tries too hard to meet the goals, “fitting” the results, which is reflected in a significant difference between the training results and their validation. Errors resulting from these defects can take the following two forms.

- **False-positive errors:** identifying signs of forgery in its actual absence. This type is not so critical: if the artificial intelligence system is a means of pre-expert verification, a specialist or expert will always be able to identify such an error afterwards. In most cases, when a person recognizes a possible forgery he makes this type of mistakes. Their quantitative indicator (False Acceptance Rate, FAR) is calculated as the ratio of false-positive errors to the total number of forged signature samples presented. Computer science theory also notes that increasing the size of the dataset can lead to an increase in the false-positive rate. The latter phenomenon was not detected in this study.

- **False-negative errors:** the inability of the network to detect signs of forgery when they are present. This error is critical since the artificial intelligence system focuses on preliminary verification of signatures, so the operator will not receive a message about the signs of forgery and will not be able to verify it. Their quantitative index (False Rejection Rate, FRR) is calculated as the ratio of false negatives to the total number of presented authentic signature samples.

Based on the total number of errors, the Equal Error Rate (EER) is calculated, by which the quality of the network is evaluated. The lower the score is, the better the learning outcomes. At this stage of the experiment, the highest EER values reached 19.8%, that is,
the correctness of signature authenticity/falsity determination is still at the value of 80.2%. The accuracy is now 92.84%.

The steps described above are followed by multiple repetitions of the training and validation steps until the desired results are achieved, or the developer concludes that they are not achievable. The connections of artificial neurons that lead to the wrong solution are downgraded in priority, and those that made the correct conclusion will receive more weight in the next stages of pre-learning. The developer’s activity here boils down to checking the dataset for false or insufficiently qualitative data, improving the qualitative or quantitative characteristics of the dataset, replacing the architecture of the artificial neural network or its training algorithms (in case of unsatisfactory results). In the present study, additional learning involved adding previously unknown signature pairs to the dataset based on the original-original and original-false models photographed with a smartphone camera (rather than obtained using a scanner, as was done for the main dataset).

4 Discussion

It should be noted that if the experiment of creating an artificial intelligence system is constructed correctly, positive side results are possible; for example, when developing the described network aimed at handwriting recognition by analyzing the collected dataset, some forensic approaches to classification of signatures and detection of their forgery by traditional forensic methods were revised [13].

Of course, the signature verification system must be accessible. Given that a device equipped with a camera is required to upload comparison samples to the system, smartphones were chosen as the main platform. The appearance of the interface of the “SigVer” mobile application under development is shown in Fig. 2.

Note that the output of the artificial neural network (indicator “1.00” in Fig. 2) is not percentile: the result currently ranges from 0.00 to 1.25, where the smaller the value, the more likely that the signatures being compared were made by the same person. The question of the need for verbal evaluation of the output remains debatable: the words “authentic”, “forged”, “controversial”, etc. essentially deprive the result of objectivity, as they push the user to a specific decision, which, however, is quite typical for recommendation intelligent systems, to which this project belongs. An alternative is to specify only the digital characteristic of the result of the artificial neural network.

5 Conclusion

Recall that the applied task of this experiment is to develop a system of pre-expert analysis of signatures as a requisite of legal documents. It is assumed that the developed system will help the subject who does not have special knowledge to decide, in particular, the question of the need to use them (for example, a bank employee can use the described application when checking the documents, or the investigator – when examining documents, as a result of which subjects of both private and public law will be easier to determine whether a specific case requires special expertise). Artificial neural networks cannot completely replace a human expert in the field of handwriting (at least now). This is a particular case of the general concept of inapplicability of artificial intelligence system results: legal proof must be verifiable, and the output of an artificial neural network, while generally correct, may contain obvious errors.

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Fig. 2. SigVer mobile application interface for signature verification: 1 – field for scanned original signature, which authenticity is not in doubt; 2 – field for scanned disputed signature; 3 – result of signature comparison by the artificial intelligence system (Source: author’s archive).

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Criminalistic thinking: theory’s characteristics in the structure of criminalistics

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Abstract. The article considers a modern model of the criminalistic thinking theory. The analysis of its content, theoretical provisions using comparative and structural method shows that this theory is a partial theory related to general provisions of the criminalistic science and it is reflected in various branch-specific theoretical provisions of the criminalistic technique, tactics and research methodology. Criminalistic thinking as a subject of the theory is considered as a state and an operational system including, but not limited to, methods related to cognitive activity of the investigator or another subject of criminalistic thinking. The article analyzes the contents of the criminalistic thinking in terms of its level characteristics: as a hierarchy structure, e.g., its components are conditionally vertical or embedded into each other; or as a combination of instrumental elements of criminalistic thinking – tools, methods, operations having no rigid link and equal to each other (horizontal structure). The vertical structure includes a mind-set, linguistic, motivational components and primary knowledge. The horizontal structure of criminalistic thinking consists of individual cogitative methods of logical, psychological, heuristic and intuitive nature. The article also considers British and American approaches to organization of criminalistic thinking and dealing with sources of criminalistically relevant evidentiary information.

Keywords: criminalistic thinking, criminalistic mindset, theory of criminalistic thinking, structure of criminalistic thinking, theory of criminalistics

1 Introduction

Development of the criminalistic science and it becoming fundamental (formation of theoretical structures related not only with applied methods of solving and investigation of crimes, but individual organizational and cognitive basics of this activity) promoted scientific interest to the phenomenon of criminalistic thinking. It fits the characteristics of the Russian definition of the object of criminal science since it is related to detection, prevention, solving and investigation of crimes and the link between activity and thinking seems obvious. However, a precise place of this phenomenon and its related theory in the structure of criminalistic science is uncertain. This article studies the theory of criminalistic thinking in terms of inter-disciplinary and comparative approaches.

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2 Material and methods

Taking into account that the discourse of thinking was the subject of philosophy and thinking, it is impossible to study the phenomenon of criminalistic thinking without the tools of these science. Moreover, it must be studied by using the method of interiorization – analysis of activity of a subject to understand how its thinking works. Since this paper is dedicated to criminalistic issues, key research methods are comparison and modeling.

Psychological and management literature often uses the following scheme: thinking is the basis, with the system of skills placed below, and the system of methods closing the vertical. This model seems true only when analyzing thinking in foreign interpretation – as a mindset. As part of the analyzed theory of criminalistic thinking, it is considered as a state and as an operational system including, but not limited to, methods related to cognitive activity of the investigator or another subject of criminalistic thinking.

Any multi-component system such as the model of criminalistic thinking can be structurally analyzed. Depending on the building principles, structured (ordered, hierarchical, vertical) and non-structured systems can be identified similar to the concepts of computer modeling. As applicable to the subject of our study, the first-type systematization describes the place of criminalistic thinking theory in the system of criminalistic science and describes the phenomenon itself in the structures of thinking activity of the subject of solving and investigation of crimes.

3 Results

Let us consider the theory of criminalistic thinking in the system of modern criminalistic science.

The Russian criminalistic scientists have frequently expressed the idea that the system of criminalistic science cannot be closed and must be always supplemented by new structural elements, concepts and categories [1].

It should be noted that the Russian and foreign approaches to the structure of criminalistic science differ. While the Russian system is built hierarchically, from general provisions of criminalistic science to specific provisions (technique and tactics) and then to the special section (criminalistic theory of investigation), the Western criminalistic science has adopted a chronological approach according to which the science formation and teaching model the process of investigation from its beginning to its end. In this case, the definition of general provisions is followed by describing actions taken when being notified of a crime [2], or, in fact, the theory of criminalistic thinking (for example, by describing the rules of dealing with ideal evidence or typical investigative omissions and mistakes) [3]. In other words, Russia has adopted a deductive approach (from general branch-specific studies of law to criminalistic methods) and some countries, for example, the USA, use an inductive approach (from methods to their generalization) [4]. We should note, however, that the former countries of the Warsaw Pact teach criminalistic science using the Soviet (Russian) system: general theory of criminalistic science, criminalistic technique, criminalistic tactics, but it lacks the investigation methodology [5].

The issues of criminalistic thinking are traditionally considered as a component of criminalistic tactics or as applicable to a respective specific activity (operative, prosecutor’s, expert examination, judicial, management, etc.). This is explained by the fact that individual criminalistic theories included in the theory of criminalistic thinking such as versions, criminalistic situations, investigative and other decisions, goal-setting, investigation mistakes, etc. are usually considered in the structure of the criminalistic tactics.
Therefore, the theory of criminalistic thinking is a part of the overall theory of criminalistic science and includes other criminalistic theories. The latter comprise the theory of criminalistic situations, the theory of investigation and other mistakes, the theory of investigation versions, the theory of planning and goal-setting.

It seems obvious that criminalistic thinking penetrates all activities in solving and investigating crimes and, therefore, its theory (just as some others such as theories of identification and investigative mistakes) can be considered in terms of criminalistic technique, tactics, methodology of investigating certain types and categories of crimes as well as related theoretical structures: theories of legal expert examination, investigative, prosecutor’s, judicial activity, etc. In this sense, the theory of criminalistic thinking is an attempt to solve several issues of the criminalistic science in a systemic manner. “Generalization of several criminalistic issues that would result in a new criminalistic issue is possible but only if the combined issues have common points allowing to search common solutions” [6].

Distinction between general and partial theories of criminalistic science suggests:

1) the first is a relatively individual subsystem that does not include another subsystem of the criminalistic theory – partial theories;

2) this subsystem is an integrative product, a result of creative understanding of achievements of various partial criminalistic theories including theories of investigative cognition and proving for cases of certain categories (various types, groups, kinds of crimes);

3) the general theory reflects the entire subject of criminalistic science, while each partial criminalistic theory reflects only some part, an individual aspect of its subject [7].

The structure of scientific knowledge suggests inclusion and hierarchical pattern of individual theoretical structures. The general theory can be perceived both as an individual theoretical structure and as a section of criminalistic science. Its individuality suggests applicability to any other section and a branch in that section or another smaller or less structured form. The same can be said about some partial theories – first of all, criminalistic identification, crime mechanism and criminalistic situations.

The theory of criminalistic thinking is also related to any decision or action made during investigation: both effective and unsuccessful. Therefore, we believe that the concept of criminalistic thinking is a component of the general theory as a section of criminalistic science and is related thereto as a property (characteristic) and its attribute: the first can be used individually or by indicating one or more attributes, while sometimes an attribute can be used separately. To describe a link of this type, it is convenient to draw an analogy with general and special norms of law: if the issue is not settled by a special norm, it can be solved by the general one.

E. V. Smakhtin described the methodology of criminalistic science as follows: this is “a theory of the criminalistic method representing a system of principles and methods of cognition of material and ideal traces in the mechanism of criminal activity and criminalistic activity undertaken during theoretical and practical studies and intended to obtain information related to the subject matter of criminalistic science” [8].

It should be believed that this method of cognition is criminalistic thinking taking into account both the condition of the subject of criminalistic cognition and a combination of tools of its thinking activity. The considered model initially oriented to the subject of practical activity can very well fit the theoretical cognition. The more general components are there in the thinking activity of the criminalistic scientist and the subject it cognizes (investigator), the more accurate are descriptive and explanatory models.

It is clear that it may take a long time to build a comprehensive theory of criminalistic thinking; this phenomenon requires universal and critical evaluation despite being admitted in the Russian and foreign science. It corresponds to the task of generalization of theoretical
developments and empirical materials. The theory of criminalistic thinking is relevant because it helps specifying the subject of criminalistic science, improve professional level of research subjects and is used as a basis for applied and fundamental studies of development and use of intellectual software systems in solving and investigation of crimes.

Criminalistic thinking as a basis for solving and investigation activity can be represented in two ways in terms of its structure: as a condition and as a combination of methods. In the first case, the structure of criminalistic thinking is hierarchical, e.g., its components are conditionally vertical or embedded into each other as Matryoshka elements (vertical structure). In the second case, elements of criminalistic thinking (tools, methods, operations) have no rigid dependency on each other and are equal (horizontal structure). Let us consider both models in more details.

3.1 Vertical structure of criminalistic thinking

The hierarchical structure of criminalistic thinking can be graphically represented as a pyramid or cone. Therefore, its elements can be (from bottom to top):

1. Mindset basics of law enforcement activity resulting from its goals and objectives applicable to each type of subjects of criminalistic thinking including understanding of goals and ethical frames of actions in the structure of criminal proceedings. As K. Popper said, “the critical step must be preceded by a dogmatic step: criticizing is permitted only if a dogma was created serving as a certain background” [9] to understand conflicts in past events (which are faced by subjects of criminalistic thinking). Mindset is the specified background of both criminalistic thinking and its derivative forms of law-enforcement activity.

2. Linguistic basics: not only knowledge of legal terminology and true legal language but competence as well: general linguistic and procedural. In certain cases, it becomes important to master other technical linguistic skills. We shall note that in some scientific traditions (such as L. Wittgenstein, L.S. Vygotsky, N. Chomsky) language skills are the basis of consciousness and, therefore, thinking (in linguistics, this phenomenon is referred to as the Sapir–Whorf hypothesis expressed by the formula “language determines thought”). L.S. Vygotsky identifies two levels of link between speech and thinking: internal semantic and external acoustic and indicates a conflict between them [10]. In the context of the research, this theory can be applicable: versions, logical consequences and investigative situations in the structure of criminalistic thinking of the investigator are not always reflected in the speech, including written speech presented in procedural documents.

In terms of narrow professional types of thinking, including criminalistic thinking, linguistic specifics of a certain profession are seen to be resulting from its goals and objectives and, therefore, take the next level.

Due to an obvious incriminatory nature, speech of an investigator dealing with general criminal cases rarely includes structures based on negation, since prosecution must be built on positive rather than negative facts. In the advocate’s speech, this characteristic depends on the selected line of behavior: a model alternative to the version of prosecution will be based on positive sayings; a model built on counteracting the investigation and its critics will be based on negative sayings. Professional speech deformations can directly determine suitability for work: they clearly reflect capabilities of critical analysis, compliance of personal motivation with goals and objectives of criminal procedure. Building a complex informational system (such as prospection, defense, expert research, etc.) can be compared to diagnostics in medicine: without strict compliance with accurate terminology, the system stability will be impaired even when supported by correctly identified actual circumstances. Any procedural document is made not for personal use by its author but for further reading.
and studying (most probably, from extremely critical positions) by other subjects. Therefore, the linguistic level of criminalistic thinking also suggests evaluation of other opinion in verbal recording of actions (both oral and written speech, including procedural speech).

Linguistic skills define the contents and speed of working with the conceptual framework, which determines the version process.

A separate aspect of that level of criminalistic thinking contains the problem of translation from special languages into a natural language, which is expressed when using special knowledge. Absolute confidence (e.g., zero probability of the disproving fact to occur in the future) is not achievable in any science, but expert opinions often include categorical conclusions. This categoricity must be correctly interpreted and become clear to other participants of proceedings: investigator, prosecutor, judge. For example, in the USA this issue has been known for many years. D. Kaye studied the difference between judges, jury members and legal experts and developed a wording used by an expert when answering to the members of the jury: “Evidence that bullets made from the same-composition piece of lead have a higher degree of analytical indiscernibility as compared to bullets made of various lead fragments” [11]. The wording is scientifically correct, but this phrase is hard for perception by non-experts. Therefore, ensuring justice transparency also suggests minimized use of hard-to-understand wordings and special terms when they can be replaced with other ones without impairing the sense of the evidence transmitted in the procedural document. In this manner, the speech of the subject of criminalistic thinking must have a balance between using special terminology and accessibility and transparency of formed texts.

3. Motivational sphere: the subject of criminalistic thinking must understand, accept and respect its role in solving and investigating crimes. In many countries they say about the profession of investigator: “one must love one’s job or one should leave it”. It is obvious that the system of motives of any activity always has many components, but the motivation in criminalistic activity must be a desire to find truth and restore justice. The goal of the subject of criminalistic thinking and its motivation sphere must have no significant differences.

Motivation of an investigator for each certain situation is comprised of rational and emotional components. The first include understanding of procedural time limits, issues of crime qualification and selection of investigating areas, finding out drawbacks and weaknesses in procedural documents. The emotional aspect is responsible for filling tactical techniques of psychosocial nature and empathetic perception of other subjects. It can affect crime qualification in terms of such characteristics as effect, violence, cynicism, etc.

Investigator’s motivating also depends on this stage during investigation. The effect of non-acceptance of losses is known from the psychological science. It states that in case there is a certain goal in continuous processes (for example, drawing a bill of indictment by an investigator), the subject motivation goes down when approaching the goal. A desire to avoid mistakes becomes more important than a desire to improve the evidentiary basis. Efficiency of a successful solution is not that important as a loss of existing evidence. According to the polling of investigators, average efficiency of initial investigating activities is less than the same for further activities, but as for highest efficiency, the results are opposite, which is rather logical: search and digestion of new information is much more complicated that checking existing data. Scientific thinking functions in the same manner when analyzing the investigation process: the number of papers discussing the initial stage of investigation exceeds the number of publications concerning further stages, which is explained by key objectives of the investigation. In the context of this paper, this can be formulated as an organizational psychological technique intended to gradually increase
focusing on the dynamic investigative process to compensate the effect of non-acceptance of losses.

The final stage of thinking is initiation or further iteration of thinking or any other action. The notion of motivation sphere indicates dependency of actions on thinking, a so-called ideomotor effect.

4. Primary knowledge and capabilities of using them. Forming primary knowledge starts in the legal university, develops during professional activity and never stops. It is clear that the nature of such knowledge and its belonging to primary or special type will differ for different subjects. For an investigator, knowledge in criminal law (especially, qualification of crime), criminal procedure, criminalistic science and legal psychology must be indicated as having the highest priority. In its turn, expert knowledge will be special, but not always vice versa.

Using knowledge suggests good memory that allows keeping and updating information relevant for various situations. An alternative is impaired memory and concentration of attention caused by an opportunity to quickly receive necessary information using a smartphone (the latter include CrimLib.info Investigator Guidebook app developed by the authors), voice assistant, public databases, criminalistic and investigative accounting, as well as improved visual skills to perceive complex visual objects in a faster manner with high quality. However, it does not mean that integration of intellectual systems into the society leads to degradation of individuals.

A so-called Flynn effect known in psychology and sociology demonstrates that an average intellectual level of each new generation rises up, e.g., the current average intellect coefficient corresponds to a high level of intellect of the previous generation [12]. However, modern studies show that the Flynn effect decreased or fully vanished as digital technologies developed [13]. It should be noted that the accuracy of that study is rather dubious since it studied intellect of conscripts, which resulted in a substantially narrowed sampling so the conclusions can be explained by social reasons and might not be related with an abruptly reduced intellectual level. It seems that there is not a reduced intellect but, rather, its reorientation: for example, a modern student of legal science remembers less than his or her predecessors in the 20th century, but can use a higher number of techniques for information search and analysis.

These elements of the vertical structure model of criminalistic thinking are not exhaustive but they are indispensable when it is required to implement thinking activity of an investigator of other subjects of criminalistic thinking. These components reflect only pre-situational elements of criminalistic thinking and this phenomenon is viewed in its operating environment (during investigation), so we can agree with I. E. Dror and R. D. Stoehl et al. [14, 15] who state that the basic rate of expectations, e.g., a reflection of subjective perception of probability of various classes of evidence information sources, is the next element that can be deemed a specific addon for the given system.

This system contains fundamental grounds for any operational with information comprising criminalistic and other types of thinking. Indeed, it is rather conditional and contains elements that can be calibrated during training and that directly affect the evaluation of informational models. The scheme and its components can be programmed in the basis of the intellectual system [16].

It should be noted that some foreign sources use the term of “mindset” as a foundation of the system of thought of any professional that includes several addons, for example, a system of skills (the second level) and methods contained in it (third level) [17].

Apart from these vertical levels, a similar model can be formed for informational resources that are integrated into the preceding system or considered in an isolated manner. They can include as follows:
1. Information on circumstances of the investigated crime as a short or expanded plot specifying initial data for the case. This level may include various types of information and its derivative knowledge as well as its processing operations. In the context of applied recommendations, it reflects the need to filter and manipulate information, for example, when assigning judicial expert examinations, since excessive data transmitted to investigation participants can distort the objectiveness of their professional cognition. S. Cassin et al. state how information about whether the suspect admitted guilt or not should be avoided in the expert examination assignment (and during investigator communication with the expert) [18].

2. Available sources of trace information and their belonging to the case; opportunities to retrieve specimens for comparative study. Defining whether sources of information belong to the crime must depend on objects of unknown origin and verified sources, including specimens for comparative study, but the perception of attributes of targets (specimens of unknown origin) must be done in isolation from verified sources [15].

3. Trace information represented by criminalistically relevant attributes of objects and perceived in isolation from related identification fields. During the expert examination, a handwriting expert must not pay attention to technical criminalistic specifics of the examined document. These specifics (attributes) are contextual for that study and do not belong to it directly, but are extremely important for the investigated situation in general.

3.2 Horizontal structure of criminalistic thinking

While the vertical model of criminalistic thinking reflects its fundamental basics and is in fact present in the activity of any investigator or another subject of investigations the horizontal model comprises tools for thinking activity. The term “horizontal” in this case reflects no dependency between individual elements: some of them are natural, while others are formed during training: some are implemented in imperative manner, while others are used upon decision of the subject of criminalistic thinking, however the conditions to implement such methods are always beyond consciousness so some of them cannot and must not be integrated into the hierarchal structure.

These tools include several dozens of methods and typical operations that can be grouped depending on the type of their processing by human thinking. This classification includes rational-logical and psychological methods and operations. A related type includes heuristic methods in the structure of criminalistic thinking.

4 Discussion

Apart from the vertical and horizontal structures, criminalistic thinking can be considered chronologically through the prism of sequential stages reflecting intellectual activities of a respective subject.

From the viewpoint of A.B. Sokolov, structural elements of criminalistic thinking (as a component of investigative activity) include:

1) identifying a disputable situation;
2) diagnosing an existing situation;
3) defining and formulating the primary problem (goal);
4) developing versions;
5) checking versions;
6) comparing results of the taken decision with the initial goal [19].

The British Association of Chief Police Officers (ACPO) has selected five key principles of criminalistic thinking:
1) understanding the sources of evidentiary materials;
2) planning and preparation;
3) checking;
4) recording and comparison;
5) evaluation [20].

It seems that these principles are rather individual operations implemented in the
consciousness of the investigation subject when dealing with evidence, which somewhat
narrows the application area of criminalistic thinking. Despite this, such a system has
certain theoretical value since these operations reflect a certain external structure, an exo-
skeleton, whose internal elements represent profound criminalistic knowledge and
cognitive mechanisms of logical, psychological, heuristic nature located chronologically in
the sequence as they are used by the subject of investigation.

Afterwards, ACPO proposed another model, a so-called National Decision Model that
suggests as follows:
1) information collection;
2) evaluation of threats and development of working strategy;
3) considering powers and limitations;
4) identifying opportunities and unforeseeable circumstances;
5) committing actions [20].

The Norwegian scientist I. A. Fasing considered drawbacks of this and similar models
in his doctor’s thesis and states as follows: “As for the process of developing and taking
decisions, there are no suitable and scientifically substantiated models. Even the newest
recommendations and guidelines for investigators do not comprise a competent model of
how one should think during investigation” [21]. It should be noted that methodological
guidelines for law enforcers in the European Union contain significant blocks oriented for
optimization of data processing and decision-making by human. A conclusion can be made
that the objective of criminalistic science is not only development of criminalistic
recommendations but it also suggests creating meta-recommendations so that the
investigator and other subjects could optimize cognitive processes and avoid multiple
mistake and cognitive distortions.

The National Decision Model existed in Great Britain until 2015 when ACPO was
liquidated and replaced by the National Council of Police Officers.

We should also pay attention to the thinking model proposed by Nobel laureates Daniel
Kahneman and Amos Tversky and their colleagues K. Stanovich and R. West. According to
their concept, thinking consists of two components: System 1 and System 2. The first one
acts permanently and differs with high speed and low level of critical analysis of decisions
made. On the opposite, System 2 is used only in complex cases and is described by high
efficiency when evaluation information and taking decisions and by complexity of using
and high energy consumption (thinking subject gets tired more quickly). With a certain
approximation, system 1 can be defined as intuition and other heuristic methods, and
System 2 as a combination of logical thinking methods suggesting the use of deployed
programs and algorithms.

In the context of criminalistic thinking, this theory results in a conclusion that the
decision-making process must be decelerated as often as possible, and snap judgments must
be avoided, even those based on similar examples (in case of no additional confirmation).
This approach to structuring of criminalistic thinking is based on the speed of intellectual
processing of incoming information.

5 Conclusion
In this manner, criminalistic thinking can be considered as a scientific concept or as a component of investigator’s activity and activity of other subjects of solving and investigating crimes. Criminalistic thinking is a partial theory belonging to general provisions of criminalistic science and it is reflected in branch theoretical provisions of criminalistic technique, tactics and methodology of investigation because it is impossible to ensure efficiency of individual actions of the investigator and other subjects of criminalistic thinking without it. Criminalistic thinking can be represented in various aspects: first of all, it should be considered from the viewpoint of statistical methods (vertical, hierarchical structure) and instrumental methods (horizontal structure). Moreover, the structure of criminalistic thinking can be perceived in a different way: from the viewpoint of sequence of operations or the speed of committing them.

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The influence of temperament on the choice of interrogation tactics

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Abstract. The article analyzes the influence of the behavioral characteristics of the interrogated person on the choice of tactical techniques used during the interrogation. The study aims to identify and generalize ideas about the psychological features of the investigator’s choice of interrogation tactics. General scientific methods were comprehensively used: theoretical analysis and synthesis of scientific information, generalization of scientific data. Investigation of a crime, especially at the initial stage, is accompanied by conflict situations and behavioral manifestations of interrogators, which are indicators of temperament. The authors studied psychological features of the choice of interrogation tactics, the use of psychological knowledge on the individual nature of the person in a specific investigative situation of interrogation, analyzed the works of legal psychology and criminalistics. Psychological foundations of investigative tactics are considered the initial provisions that serve as a means of determining tactical techniques. Any subject is seen as a bearer of unique qualities, such as character and temperament. Knowledge of these personality traits will assist the investigator in making contact with a stranger and allow predicting the behavior of the interrogated person. It is possible to establish the individual characteristics of the interrogated person and determine a priority line of behavior, considering individual mental characteristics through observation and conversation. It is theoretically substantiated that the investigator, having received the necessary and valuable information about the individual characteristics of personality and the psychological state of the person in interrogation, can develop the correct tactics and strategy of interrogation to obtain objective and reliable information.

Keywords: tactics, interrogation, criminalistics, temperament, legal psychology

1 Introduction

During criminal case investigation, especially at the initial stage, the investigator is faced with various forms of psychological resistance, conflict situations and behavioral manifestations of interrogated persons. Behavioral characteristics of the offender, when few

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basic starting positions in a situation of lack of information can make a big difference. The
behavioral characteristics of the interrogated person are not of evidentiary value but can be
used to select the tactical techniques used in the investigation.

2 Methods

Research methodology involves the use of general scientific methods of knowledge:
theoretical analysis and synthesis of scientific information, synthesis of scientific data. The
authors studied the psychological and tactical features of the choice of interrogation tactics,
the use of psychological knowledge about the individual nature of man in a particular
investigative situation of interrogation. The study of the psychological foundations of
investigative tactics is seen as a starting point that serves as a means of determining tactical
techniques.

3 Results

1. The analysis of the thematic literature shows that the problems of the psychology of
interrogation have been repeatedly studied, but the influence of the temperament of the
interrogator on the choice of interrogation tactics has not been sufficiently studied.

2. Interrogation is a “psychologized” investigative action, related to the personal
characteristics of the interrogated person. Interrogation has its psychological peculiarities,
which differ from each other. Each individual has a unique combination of qualities such as
character and temperament, so without taking into account the individual characteristics of
personality it is difficult for the investigator to establish contact with a stranger.

Interrogation is a very complex investigative action, which requires the investigator to
have a set of qualities such as professional culture and ethics, knowledge and understanding
of human psychology and skillful psychological influence, tactical and criminalistic
techniques of interrogation. During the interrogation, the investigator must obtain
information from the interrogator about the factual side of the event sought and give a legal
assessment of this information. The purpose of the interrogation is to obtain the most
complete and objectively reflecting reality [1].

Interrogation is a “psychologized investigative action” [2], associated with the personal
characteristics of the investigator and the interrogated person, considering the individual
psychological characteristics of the interaction between individuals. Each individual has a
unique combination of qualities such as character and temperament, so without taking into
account the individual characteristics of personality, the investigator will find it difficult to
establish contact with a stranger. Thus, for example, consideration of the psychological
features of the interrogated person is also necessary for a correct choice of tactical
interrogation techniques [1].

Interrogation as a complex procedural action is usually divided into stages, where the
investigator formulates goals and solves specific procedural and tactical problems.
Considering the interrogation through a psychological prism, we can distinguish a
preparatory stage, during which it is necessary to find out the questioning data and
determine the priority line of behavior of the interrogated person, considering his individual
mental characteristics. The next stage is the establishment of traditional psychological
contact, where the investigator creates an atmosphere of trust and helps to set up a mutual
understanding. At this stage, solving the main task of the interrogation, it seems extremely
important to establish the individual characteristics of the interrogator and the nature of the
conversation (pace, rhythm, level of conflict and tension of the interrogator). The final
stage is the stage of psychological analysis and evaluation of the interrogation results. Each of the stages has not only procedural but also psychological content.

4 Discussion

Scientists and practitioners study the psychological foundations of investigative tactics, treating them as starting points serving as a means of determining tactical techniques. The most significant studies in this area are the works of A.R. Ratinov, R.S. Belkin, M.E. Enikeev, Yu.M. Antonyan, V.E. Eminov, R.M. Granovskaya et al.

A.R. Ratinov studied important problems of psychology and law, conducted fundamental research in the field of legal psychology, developed the psychological foundations of investigative activity, in particular, the psychology of interrogation and confrontation [3].

In foreign countries, scientists also pay great attention to psychological interrogation techniques, for example, Jeffrey Kaplan and Brian Cutler point out that the most common tactics used by investigators are appeals to the personal interests of suspects, presentation of evidence, and rebuttals, revealing contradictions and offering rebuttals [4].

Psychotypological methods are often used in forensic research. For example, I.T. Krivoshein singles out emotional and rational types in his studies [5]; there is also the classic psychological division of people into extraverts and introverts [5]. The forensic study of personality began with typological studies, another author – N.T. Vedemikov considered temperament as a criminally significant characteristic of the criminal [6].

Before the start of the interrogation, you should carefully study the case materials, familiarize yourself and make up a psychological portrait of the interrogated person. An important aspect of personality are the psychological qualities of the individual: will, temperament, emotional qualities imposing an imprint on the activity and behavior in all social and legal spheres of personality [2], especially in investigative and tactical situations.

According to some foreign researchers, significant results are consistent with the theories of emotion as information and cognitive evaluation and have practical value. Emotions can be defined as conscious states of subjective feelings that are often accompanied by physiological, cognitive, and behavioral changes [7].

The interrogation can be divided into static and dynamic. It is important to emphasize that temperament is directly related to the dynamic side of the interrogation, and the cognitive processes of the interrogator.

Typology of temperament includes not only personal but also behavioral aspects that help identify individuals, which in turn increases its relevance to determine the appropriate tactics for the investigator. The dependence of delinquent behavior in the form of a crime on the temperament of the individual is confirmed by several studies [8].

Correct determination of the temperament type and features of his emotional behavior during the interrogation [6], allows the investigator to develop the right interrogation tactics and strategy. The investigator, using in his professional activity the psychological knowledge about individual features of the person, gets an opportunity to determine in advance a set of tactical techniques used during the interrogation of the interrogated person. Mastering the typology of temperament helps the investigator “predict” and anticipate human behavior in an interrogation situation.

The earliest known classification was proposed back in the 2nd century BC by physician Claudius Galen. The four types he singled out are now considered basic: sanguine, choleric, phlegmatic, melancholic [2]. If Galen correlated temperament with features of human metabolic processes, Pavlov I.P. considers the dependence of temperament on the type of nervous system. The scientist revealed the patterns of higher nervous activity, it was found that the basis of temperament are individual characteristics of
conditioned human reflex activity. Pavlov believed that the properties of nervous processes determine the type of nervous activity, which in turn is closely related to the type of temperament (strength, weakness, balance and mobility of the nervous system). Pavlov I.P. identified and described four types of the nervous system, which can be compared to the classical types, showing a high correlation between them [2].

The works of Teplov B.M. and Nebylitsin V.D. have expanded the knowledge of the basic properties of the nervous system, and additional properties of the nervous system (dynamism and instability) have been experimentally established [2]. Temperament is integrated into the structure of the personality, from the position of B.G. Ananyev, “it is its natural basis” [2]. Temperament manifests itself in all spheres of human mental activity: emotional, cognitive, volitional, as the biological foundation of our personality, i.e., based on the properties of the nervous system, associated with the structure of the human body (constitution), with metabolism in the body.

The psychological essence of interrogation is manifested in the use of a set of psychological methods and techniques that correspond to the norms of procedural law. The choice of appropriate psychological methods and techniques of interrogation depends on the professional skills of the investigator and the ability to highlight the individual characteristics of the interrogated person. According to S. O’Mara, an experienced investigator can obtain reliable information, often even if the source does not know that he disclosed the information [9].

For this study, we can specify only the basic characteristics of types of temperament, which will help with the choice of appropriate interrogation tactics.

Sanguine (strong, balanced, agile) – a person is fast, easily adapts to changing conditions in life. He is capable of self-control in a stressful situation. Sociable, agile, easy to get along with new people. Can quickly lose interest in a case if it is not interesting to him. He has a strong balanced nervous system, does not react to weak influences, is a little vulnerable, and has balanced volitional and communicative qualities. When he is interested, he is active, if he becomes uninteresting, he becomes bored. Characterized by high resistance to the difficulties of life, a mobile, sociable person, quickly forms new relationships with people, while lacking consistency in relationships, often changing attachments.

Choleric (strong, unbalanced) – a person, able to work, ready to react quickly, it is difficult for him to “get along” with himself. Excitable, unrestrained energetic, can be irascible and unrestrained. The nervous system is unbalanced, cyclical moods dominate. In interaction, impatient, shouty, aggressive, and unrestrained.

Phlegmatic (strong, well-balanced, inert) calm, slow, very difficult to abandon the installations and stereotypes formed, in a stressful situation shows composure, endurance, rigid, memorizes everything he learned, has difficulty if necessary to change the daily routine, work, friends, with great difficulty adapting to new conditions of life. Can resist prolonged stimuli for a long time.

Melancholic (weak) – the person is passive, inhibited, inclined to withdrawal and solitude, under the influence of strong stress, shows fearfulness, anxiety in his behaviour. Shows insecurity, timidity, lack of energy, little sociability. New surroundings and new people scare him, he tires easily, and he is inefficient [10].

When interrogating choleric and sanguine people, a high tempo, rhythm should be chosen. When interrogating phlegmatic, it is necessary to take into account that he needs a longer adaptation. The pace of conversation is relatively slow. When interrogating melancholic people, it is necessary to remember that in a difficult life situation (interrogation) this type demonstrates extreme inhibition, lethargy, apathy and anxiety, which can complicate the establishment of contact and dialogue.
In this regard, in [11] it is suggested the use of behavior sequence analysis (BSA; Keatley, Barsky, & Clarke, 2017; Marono, Clarke, Navarro, & Keatley, 2017), also called lagged sequence analysis (LSA), which allows the display of time chains of (verbal and nonverbal) behavior and is presented in clear diagrams that can be used to show what psychological techniques are used in interrogations [11].

5 Conclusion

Summarizing the theoretical study, we can make a reasonable conclusion that the interrogation, as an investigative action, has its psychological features, which are associated with the personal qualities of the person interrogated, for example, temperament. The establishment of temperament is possible through observation, conversation, as well as by determining the percentage ratio of different types of temperament (Test “Formula of temperament” A. Belov) [12]. The investigator will get necessary and valuable information about the individual’s characteristics and the psychological state of the person in the situation of interrogation. Thus, determining the temperament of the interrogated person is important for choosing interrogation tactics and obtaining objective and reliable information.

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Migration search for foreign citizens: problems of administrative-legal regulation

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Abstract. The activation of migration processes in the modern world, which threaten the state’s national security and give rise to an illegal flow of population migration, requires the formation of not only administrative and coercive measures to combat this negative phenomenon, but also the formation of a scientifically based system of means to prevent illegal migration. According to the authors, this circumstance actualizes the need for the formation of an administrative-legal institution of migration search for illegal migrants. In this scientific study, the authors consider one of the areas for the prevention and control of illegal migration in the Russian Federation, which is being formed as part of the ongoing reform of modern Russian migration legislation – the implementation of migration search for illegal migrants. Based on the analysis of the theoretical provisions of a searching doctrine, the authors propose their vision of the concept and essence of public search as a complex intersectoral institution, justify the need to introduce a special administrative-legal type of such search – migration search for illegal migrants. The concept of administrative-legal regulation of the implementation of migration search and the formation of the migration search institution within the framework of migration law as a sub-branch of administrative law is proposed. According to the authors, this type of public search is an administrative precautionary and preventive measure of administrative enforcement used by officials authorized in the field of migration, which must be carried out in administrative procedural forms specified by law.

Keywords: search, public search, migration search, illegal migrant, administrative precautionary measure, prevention of illegal migration

1 Introduction

Illegal migration, defined in legal science as unlawful migration, acts as a destabilizing factor in public order and public security and negatively affects the state of social and interethnic relations in society. The constantly developing process of reforming Russian migration legislation has always been aimed at combating illegal migration. Moreover, this

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process had tendencies related to the formation of a repressive-preclusive administrative-legal mechanism, as well as the formation of regulatory, transparent administrative-legal mechanisms of external, external labor and forced migration of the population. Today, the need for the formation of preventive and precautionary measures is being actualized, pursuing the goal of general, in relation to the flow of illegal migration, and individual, in relation to an illegal migrant, prevention of these negative socio-economic and political-legal phenomena [1, 2], the need to expand the use of digital technologies in the identification and authentication of migrants [3, 4]. In addition, the current state of migration processes, the international and national migration crises arising in this regard, sometimes even threatening the existence of mankind, requires further formation of administrative-legal mechanisms for effectively streamlining relations in the field of people’s territorial mobility. In this context, a significant role is played by the formation in the illegal migration prevention system of such a variety as migration search for foreign citizens (stateless persons). The need to form a migration search institution, noted by the President of the Russian Federation, in the List of Instructions on the Implementation of the State Migration Policy Concept for 2019-2025 [5], is due to the need to improve special mechanisms and institutions for ensuring security and rule of law in the field of population migration. Meanwhile, today, both in foreign and Russian legal science, there is virtually no scientific-theoretical development of the essence of migration search, the place of this institution in the structure of migration law and Russian migration legislation, its content and administrative-legal regulation are not defined [6-8]. The relevance of studying migration search is also due to the task set in the legislation on investigative activities to search for persons hiding from the bodies of inquiry, fleeing from investigation and trial, evading criminal punishment, as well as missing persons. All this requires the formation of a scientifically based approach to the formation of such a direction as migration search for foreign citizens (stateless persons) as illegal migrants in the mechanism of administrative-legal counteraction to illegal migration.

2 Methods

The methodology for studying the essence of migration search is a metaphysical methodology based on the methods of analysis and synthesis, available scientific information, generalization and comparison, and dialectical methodology based on legal modeling, legal comparative studies, special legal interpretation of legal texts.

3 Results

In the course of studying the problem of migration search for illegal migrants, an approach has been formed, according to which this search should be recognized as a type of organizational-managerial administrative activity of authorized entities to establish the location of an illegal migrant and solve problems in the application of administrative sanctions and other administrative enforcement measures. The essence of migration search lies in a cognitive (epistemological) mental activity, which is expressed in managerial-organizational, informational and legal support for obtaining information about those events of the surrounding reality that are important and arouse interest for solving problems of law enforcement and achieving the goal of the search. The goal of this type of search is to prevent the illegal stay (residence) of a foreign citizen on the territory of the Russian Federation, thereby solving the tasks of general and individual prevention of illegal migration. The creation of this administrative precautionary measure within the ongoing reform of the Russian migration legislation requires the formation within the framework of
migration law of the migration search institution as a sub-branch of the administrative law of Russia and the provision of its legislative regulation, the foundations of which are proposed in the framework of this study.

4 Discussion

The growth in the number of foreign citizens (stateless persons) illegally staying on the territory of the Russian Federation requires further improvement of measures to combat illegal external, external labor and forced migration of foreigners. Migration search for foreigners illegally staying in the Russian Federation should be recognized as one of such measures. The need to form such a legal institution was proposed in the List of Instructions on the Implementation of the State Migration Policy Concept for 2019-2025, given by the President of the Russian Federation.

Migration search for illegal migrants is an independent type of special activity conducted by authorized law enforcement agencies to establish the location of a person. The theory of search was originally formed within the framework of forensic science, then received an independent meaning within the framework of the theory of law enforcement operations and only in the 1970s found its legal support [9].

In the authors’ opinion, a meaningful scientific analysis of existing scientific approaches to determining the essence of search allows recognizing the most convincing point of view that the search is a complex of “organizational-managerial measures used by heads of internal affairs bodies, their operational units and employees of these units in order to timely establish the location of wanted persons, establish the identity of persons who cannot provide information about themselves for health-, age-related or other reasons” [10, 11]. Without focusing on the specifics of the search for persons who have committed crimes, it should be recognized that the search for illegal migrants as an administrative-legal search has a right to exist, since it pursues the goals of general and individual prevention of illegal migration in the Russian Federation [12]. Formation of an administrative migration search as a type of organizational-managerial administrative activity of authorized entities to establish the location of an illegal migrant and solve the tasks of applying administrative sanctions and other administrative enforcement measures.

In fact, the search carried out by the state’s authorized bodies and officials (public search) acts as a cognitive (epistemological) mental activity, which consists in managerial-organizational, informational and legal support for obtaining information about those events of the surrounding reality that are important and arouse interest for solving problems of law enforcement and achieving the goals of the search. Although public search is carried out within the framework of certain managerial-organizational, informational and legal requirements, the essential factors in the search are those specific to any cognitive activity of a person and expressed in epistemological patterns of studying the surrounding natural and social environment of the functioning of a subject and an object of public search [13]. All these essential aspects are also characteristic of migration search as a type of public administrative search for illegal migrants.

Migration search is proposed to be carried out in order to determine the location of a foreign citizen (stateless person) who has violated Russian migration legislation, as well as a person avoiding leaving the Russian Federation in the lack of legal grounds for his stay in the country, for example, in accordance with Part 4 of Article 5 of Federal Law of February 19, 1993 No. 4528-1 (as amended on July 01, 2021) “On Refugees”, a person who is refused to be recognized as a refugee is actually obliged, at the proposal of a territorial body of a federal executive body in the field of internal affairs, to leave the territory of the Russian Federation together with family members within a month from the date of receipt of a notice of refusal. Migration legislation also establishes many other cases when a
migrant illegally stays in the country, but is not a subject of an administrative offense in the field of migration. The ultimate goal of migration search is to prevent the illegal stay (residence) of a foreign citizen on the territory of the Russian Federation, thereby solving the tasks of general and individual prevention of illegal migration. In this regard, migration search acts as, firstly, an administrative precautionary measure of administrative enforcement, secondly, an administrative-legal, organizational and informational means of preventing illegal migration and, thirdly, is applied to external immigrants, external labor immigrants, forced migrants who have committed a violation of migration legislation or have not fulfilled their obligation to voluntarily leave the territory of the Russian Federation in the lack of legal grounds for their stay (residence) in the country.

The formation of the administrative-legal institution of migration search for an illegal migrant requires the formation of a regulatory definite system of executive authorities and their authorized officials, legal grounds and powers to determine the location of an illegal migrant who has violated migration legislation and evaded voluntary departure from the Russian Federation, as well as the identification of specific measures applied during the search and the procedural order of its implementation. Within the framework of a draft federal law proposed by the Ministry of Internal Affairs of Russia “On the conditions of entry into (exit from) and stay (residence) in the Russian Federation of foreign citizens and stateless persons” [14], it is appropriate to place the administrative and legal regulations forming the migration search institution in Section VII “Ensuring security and rule of law in the field of migration” and Chapter 20 “Preventive measures”. Article 110 of the above draft law contains separate provisions relating to migration search, which are summarized, firstly, migration search is carried out in relation to a foreign citizen (stateless person) who is under the controlled stay regime and, secondly, it is carried out by a territorial body of the Ministry of Internal Affairs of Russia in cases of non-fulfillment by a foreigner of his duties under the administrative-legal controlled stay regime. The analyzed draft law thus defines a range of subjects authorized to carry out migration search. They are officials of territorial divisions for migration matters, within the framework of the duties assigned to them by administrative regulations. Acting as a special administrative precautionary (preventive) measure of administrative enforcement, special measures are applied within the framework of migration search, which, in the authors’ opinion, should limit a range of subjects empowered to carry it out. However, the application of this administrative enforcement measure by employees of territorial divisions of the Ministry of Internal Affairs of Russia for migration matters does not deprive other police officers (for example, district police officers) of the right to identify illegal migrants on the territory of the Russian Federation.

A significant issue of administrative-legal regulation of migration search is the legal grounds for its application. In Part 1 of Article 110 of the draft federal law “On the conditions of entry into (exit from) and stay (residence) in the Russian Federation of foreign citizens and stateless persons”, such a ground is the establishment of an administrative regime of controlled stay in relation to a foreigner. Moreover, it should be noted that Part 2 of Article 107 of the above draft law defines the grounds for applying the administrative regime of controlled stay to a foreigner if he does not have or has lost legal grounds for being on the territory of the Russian Federation, i.e. to an illegal migrant. In this regard, it is not entirely clear whether it is possible to carry out migration search in relation to an illegal migrant who has not been subject to a controlled stay regime for some reason or another, for example, in the event of the expiration of a legal short-term or long-term stay on the territory of the Russian Federation. It seems appropriate to recognize that migration search can be applied not only to persons in respect of whom the controlled stay regime is applied, but also to any other illegal migrant.
Migration search should be carried out in case of detection of an illegal migrant based on the analysis of databases of information systems that make up the information technology and communication infrastructure in the field of migration. According to those who developed the draft federal law “On the conditions of entry into (exit from) and stay (residence) in the Russian Federation of foreign citizens and stateless persons”, when carrying out migration search, authorized officials of a territorial body of the Ministry of Internal Affairs of Russia in the field of migration are empowered to apply the following administrative-legal and organizational measures: a) checks using information systems; b) visits to possible places of stay of an illegal migrant; c) checks using information technologies, namely mobile devices and geolocation data, payment systems operating in the automatic mode of special technical means of facial recognition, as well as the means with the functions of photography, filming, video recording. It appears that these migration search measures are quite appropriate. Meanwhile, the use of information and communication technologies for the purpose of searching for illegal migrants will be more effective provided that the legislative regulation of a digital profile of a migrant is formed.

A digital profile of a migrant is a special legal migration regime under which a migrant is assigned an individual and original digital code to create an account in the information system in the field of migration and the migrant’s personal account, as well as accumulate the necessary information about the migrant and inform him about changes in his status. In addition, for the purposes of the effective implementation of migration search for illegal migrants, a single document proving the migrant’s identity on the territory of the Russian Federation can be used, with an electronic storage medium that would allow prompt search for illegal migrants using geolocation information technologies [15]. In the authors’ opinion, this is especially relevant for migrants arriving in the Russian Federation from visa-free countries, in this regard, a single document proving the migrant’s identity could be a replacement for the current migration card.

In the authors’ opinion, the key administrative and procedural aspects of the implementation of migration search for an illegal migrant should be the issuance of an order for the implementation of migration search, since it is an administrative precautionary measure. Moreover, the need to include this order in the list of acts, the adoption of which initiates proceedings on an administrative offense and an administrative investigation, should be recognized.

5 Conclusion

As a result of the study, the authors proposed the introduction of a special type of public search for a person into scientific circulation – migration search for an illegal migrant. Its concept, essence, goals, grounds for its implementation and a range of subjects authorized to carry out this activity, as well as the procedural basis for carrying out this type of activity, have been formulated.

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Forensic and criminological grounds for the division into periods of the genesis of the prison subculture in Russia

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Abstract. The article proves that the evolution of the Russian criminal subculture is closely related to the peculiarities of the prison subculture dynamics. The historical aspect of the development of the prison subculture is considered. Its evolution is analysed from the standpoint of the interaction of the prison subculture with the Russian society’s traditional culture. The changes taking place in the criminal subculture are assessed. It is noted that in the development of the prison subculture, in the Russian state there are three major periods, each of which can be associated with the economic and social changes in society. It is proved that the dynamics of the process under consideration keeps in with the law of the Hegelian dialectical triad of thesis, antithesis, and synthesis. The features of each of the considered stages are described. A special emphasis is placed on the last (third) stage of development of the prison subculture. The informal structure of convicts’ teams is considered. The connection between the passivity of the penitentiary policy of the state and the intensity of the prison subculture development are emphasised. It is shown that the emergence of a new special social and criminal law phenomenon can be associated with the merger of organised ‘criminal’ crime with economic crime. It is noted that the final stage of the evolution dynamics of the prison subculture considered in the article is the penetration of criminal attitudes and behaviour patterns into the lives of regular Russian citizens. As a result, there is a negative transformation of the basic culture of the Russian society under the influence of the criminal subculture. These phenomena are largely due to the consequences of the destructive economic and social reforms of the 1990s.

Keywords: criminal subculture, prison subculture, penitentiary system, dialectical triad, basic culture of society

1 Introduction

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As early as its appearance in the 1990s of the last century, a new type of crime in the Russian Federation got the attention of scientists, lawyers of various specialties. As far as the problem considered in this article is concerned, of fundamental importance is the scientific position that “In contemporary Russia, organised criminal activities are implemented by a new established social stratum, the underworld. By virtue of its existence, the underworld is the bearer of a specific subculture, which accumulates in itself, in addition to specific means of communication, codes and rules of conduct, also socialised knowledge of the organisational and methodological aspects of the organised crime activities related to the planning, preparation, execution and concealment of certain types of crimes and their subsequent reproduction at a higher level” [1]. This provision leads to a statement of the fact that for a successful fight against crime it is necessary to study such a segment as the criminal subculture in all its manifestations [2, 3].

2 Methods

The research is based on the idea of systematic approach as a special property of the organisation of real entities and their interaction, an activity approach, according to which analysed are both crime and socio-economic processes in society, a hypothetical-deductive approach, that involves the development and verification of the initial hypothesis by methods of deductive conclusion, comparison, analysis, synthesis, abstraction and modelling.

3 Results

The evolution of the Russian criminal subculture is closely related to the peculiarities of the dynamics of its ‘concentrated’ version, the prison subculture. At the same time, it is the prison subculture that has a significant impact on the state of both the criminal environment and criminal subculture as a whole [4-6]. In the prison subculture development in the Russian state, we have identified and analysed three major periods, each of which is associated with economic and social changes in society [2]. Overall, the dynamics of the process under consideration follows the law of the Hegelian dialectical triad of thesis, antithesis, and synthesis. At the same time, the ‘thesis’ phase corresponds to the first stage of development of the prison subculture, i.e. its origin in the social group of professional criminals. The ‘antithesis’ phase corresponds to the second stage in the development of the prison subculture, its dominance in the collectives of convicts, the acceptance by all, without exception, prisoners of the standards and foundations of the prison subculture. In this phase of its development, the prison subculture acts as a counterculture, that is a subculture that opposes itself to the base culture. The third stage (synthesis) is that the standards of the criminal subculture actively penetrate into society thereby transforming its traditional culture.

4 Discussion

It is known that the advancement of the prison subculture and its penetration into the traditional culture of society has several stages. Indeed, the prison subculture developed synchronously with the penitentiary system itself, in the evolution of which A.V. Pishchelko and D.V. Sochivko distinguish three periods. The first period (1917-1928) is a breakage of the pre-revolutionary prison system, attempts to develop the scientific basis for the correction of criminals. The second period, which the authors call relating to Gulag, can be characterised by the fact that the penitentiary system began to be used to primarily
address economic issues. At this time, the influence of the so-called criminals ‘socially close’ to the Soviet authorities. The third and final stages in the development of the Russian penitentiary system, according to the authors, began in 1959 and could be characterised by the revival of the idea of re-educating convicts. At this time, as the authors write, “both political and educational activities were restored, created was a detachment system to unite convicts into positively directed communities, the scope of general education and vocational training was expanded, self-regulating organisations of convicts began to operate” [7].

There are other classifications of stages in the development of the Russian prison system. So, for example, Yu.A. Dmitriev and B.B. Kazak distinguish the following periods of development of the Russian penitentiary system: 1) pre-revolutionary, 2) the initial period of Soviet power (1917-1929), 3) the Gulag era (1930-1959), 4) the ‘thaw’ period (1953-1960), 5) the Khrushchev period (1960-1970), 6) the post-Soviet period (1980s of the twentieth century – zero years of the twenty first century) [8]. Each of these stages corresponds to a stage of development of the prison subculture. V.V. Tulegenov identifies two periods of the prison subculture genesis. The first stage is the ‘conflict’ prison subculture, the second one is the ‘stable’ prison subculture [9]. During the first stage, the establishment of the prison subculture takes place during the conflict of subcultures, in the second stage, the environment of the convicts accepts the values of the dominant group. There are other classifications, each of which links the history of the prison subculture development with certain changes taking place in both the Russian society and penitentiary system.

In our opinion, without rejecting the accepted classifications of the stages of development of the prison system, it is possible to consider its evolution from the standpoint of the interaction of the prison subculture with the traditional culture of Russian society and, therefore, evaluate the changes taking place in the criminal subculture as a whole. With this approach to the problem under research, the first stage is the creation and promotion of a prison subculture among professional criminals. In particular, this period is recorded in pre-revolutionary sources, early Soviet researches on the prison subculture, the memoirs of V.T. Shalamov, A.I. Solzhenitsyn, E.S. Ginzburg and other prison everyday life descriptions, in which the boundary separating the society of professional criminals from the rest of the mass of prisoners can be clearly traced.

The second stage is the involvement in the prison subculture of almost all citizens serving sentences of imprisonment. Chronologically, this period refers to the second half of the twentieth century. So, getting into places of deprivation of liberty today, a convicted citizen immediately ‘plunges’ into a new cultural environment for him. He goes through the ritual of ‘propiska’, he is given a nickname, and a place in the hierarchy of prison castes is determined. Further, this person can exist in the context of prison isolation only in accordance with the unspoken ‘prison law’.

The third stage in the development of the prison subculture can be characterised by the fact that it begins to actively explore new social and cultural spaces, going beyond the penitentiary system, is being introduced into the basic culture of society by transforming it [2].

Therefore, according to N.V. Tishchenko, ‘it can be stated that in the contemporary Russian culture, the values and standards of behaviour of the prison subculture have overcome the barriers of penitentiary institutions and have become an integral part of legitimate social and cultural practices’ [10]. The prison subculture has so deeply penetrated into our society that today there is a serious question of the existence of an independent criminal ‘sub-ethnos’.

That is why, instead of the term ‘criminal subculture’, R.A. Khanipov proposes to use the term ‘criminal culture’ by giving quite strong arguments in favour of his statement [11].
The author argues that at present the ‘dominant’ Russian culture is the criminal one. This statement is fully or partially shared by researchers [4, 9] who use the term ‘criminal culture’ in their publications.

A special role in this third stage in the development of the prison subculture is played by the events of the period of the reign of the first president of Russia, Boris Yeltsin (the so-called ‘tumultuous 1990s’), which were marked by an economic collapse and the consistent destruction of social state institutions in Russia. These years were marked by upheavals comparable, according to a number of authors, to the consequences of a major war or revolution. Thus, 14 million people became the inhabitants of the social bottom at the end of the twentieth century in Russia: in our country there were about 4 million homeless people, 3 million beggars, 3 million street and station prostitutes, 4 million homeless children [2]. The Soviet health care system recognised (first by the Hygiene Organisation of the League of Nations, and then by the World Health Organisation) as the reference and best in the world was destroyed. The population of the country was rapidly dying out at a rate (according to various sources including independent ones) from 800,000 to 1 million people a year. In terms of the number of murders per capita, our country ranked second in the world (after South Africa), and in terms of the number of premeditated murders, it ranked first. Alcoholism, drug addiction, HIV infection, tuberculosis and other dangerous and socially significant diseases were rapidly spreading among the population. People did not receive a salary for months, hyperinflation raged in the country. An unprecedented rise in suicidal activities among citizens was noted. According to the corruption indicator, Russia has consistently been the leader among the countries of the world community. ‘In terms of the rate of spread and the scale of child prostitution, pornography, homosexuality, gambling and other vices in the Yeltsin years, our country could compete with the apocalyptic ‘Whore of Babylon’, the Roman Empire of the times of Tiberius, Caligula and Nero’ [2]. As a result of criminal privatisation, huge wealth was appropriated by thieves for a pittance, as a result of which there was an unprecedented concentration of national wealth in the hands of only 5% of the Russian population with the creation of a whole class of the poor, a population that lives below the ‘lowest standard of living’ [2]. Against this background, there has been a sharp increase in organised crime in Russia. Thus, the number of criminal associations in the 1990s increased by 26 times, and the number of association members by 5 times.

As a consequence of the above, in the system of social and personally significant values of Russian society in the late 1990s, anomie progressed (sociopathology, in which a significant part of society, knowing about the existence of universal norms of behaviour, treats them negatively or indifferently), such a phenomenon as the loss of the goal reflex was noted, the criminalisation of public consciousness intensified, the moral values traditional for the Russian people were replaced by the bestial philosophy of consumption.

As is known, crime is a kind of social pathology [12]. It acts as a symptom of the socially unhealthy society and state [13]. It was rapidly progressing where the state pursued a weak social policy, protected only the interests of rich people, encouraged an environment with chaos and destruction of the existing legal order [14, 15]. At the same time, V.V. Tulegenov especially emphasises the connection between the passivity of the penitentiary policy of the state and the promotion of the prison subculture [9]. All of the above leads some authors to a logical conclusion: in the post-Yeltsin period, the Russian society was not ruled by law but criminal concepts.

Thus, according to researchers, it was in the 1990s that optimal conditions for the promotion of organised crime and the emergence of large-scale banditry were created. There was a merger of organised ‘criminal’ crime with economic crime and the emergence of a new special phenomenon of the social and criminal law [2]. A distinctive feature of the period was that at that time the aggressive prison subculture overcame the boundaries of the
penitentiary system, merged into the Russian society’s basic culture and transformed it [2, 16].

The researchers also noted that, in general, the three-term change proposed in this paper in the dynamics of the quantitative and qualitative characteristics of the Russian prison subculture (and the criminal one as a whole) obeys the law of the Hegelian dialectical triad of thesis, antithesis, and synthesis. At the same time, the thesis corresponds to the first stage of development of the prison subculture (its existence exclusively in the social prison group of professional criminals), the antithesis corresponds to the second stage of this development (absolute acceptance by all convicts of the standards and provisions of the prison subculture). At the second stage of its development, the prison subculture acts as a negation of the Russian society’s basic culture. The third stage (synthesis) is that born and consolidated is a new cultural phenomenon, a criminal culture, which is nothing more than the Russian society’s dominant culture now, according to some authors [4, 11].

5 Conclusion

In the prison subculture development dynamics in the Russian state, three major periods are clearly traced, each of which can be associated with social and economic changes in the life of society. The final stage of this evolution is the penetration of criminal attitudes and patterns of behaviour into the lives of ordinary Russians. As a result, there is a negative transformation of the Russian society’s basic culture under the influence of the criminal subculture. These phenomena are largely due to the consequences of the destructive economic and social reforms of the 1990s.

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Contemporary forensic identification issues during the pandemic era

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Abstract. In the article, the authors analyse fundamentally new problems in the practice of law enforcement agencies that arise during the forensic identification of persons involved in and related to crimes that have been encountered since the announcement of a pandemic of a new coronavirus infection (COVID-19) and the widespread introduction of restrictive measures aimed at counteracting the spread of this disease, which poses a danger to others. Initially, in the constituent entities of the Russian Federation, and then at the federal level, a mandatory mask regime for all persons staying on the territory of the Russian Federation was introduced. The relevance of the research is added by the current consideration of two draft laws submitted for consideration by the Russian Federation Government, in the State Duma of the Russian Federation, discussion in the parliaments of the constituent entities of the Russian Federation, and active debate in society regarding the introduction of two-dimensional bar codes (QR codes) in public places, while long-distance and international travelling by train and air in Russia. Thus, forensic identification faces new challenges, the need to respond to the adaptation to the completely unprecedented founding fathers of forensic science, new conditions for the functioning of the law enforcement system.

Keywords: criminalistic, investigation, identification, pandemia coronavirus

1 Introduction

The restrictive measures that are in place and are being introduced by state authorities aimed at countering the spread of a new coronavirus infection (COVID-19) have posed several new issues for law enforcement in the field of forensic identification.

On 11 March 2020, the World Health Organization (WHO) declared the novel coronavirus infection (COVID-19) outbreak a global pandemic. According to the head of

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WHO T.A. Ghebreyesus, from now on, wearing masks has become not only a means of individual respiratory protection but also a ‘symbol of solidarity’ [1]. As early as 12 May 2020, within the framework of special powers, most of the constituent entities of the Russian Federation introduced a mandatory mask and glove regime for persons in those regions. The ‘symbol of solidarity’ becomes obligatory [2].

In accordance with clause 2 of the decree of the Chief State Sanitary Doctor of the Russian Federation dated 16 October 2020 ‘Additional Measures to Reduce the Risks of the Spread of COVID-19 during the Seasonal Rise in the Incidence of Acute Respiratory Viral Infections and Influenza’, universal face-mask requirements were introduced at the highest federal level, in accordance with which ‘persons in the territory of the Russian Federation are required to wear hygienic masks to protect the respiratory organs in crowded places, in public transport, taxis, parking lots and lifts’ [3].

Classical criminology considers identification (from the Latin identifico— I identify) as one of the means of knowing the truth in criminal proceedings by establishing the individual identity of a particular object with itself. The determination of forensic identification is a basic and, in its essence, doctrinal (philosophical) statement about the uniqueness and individuality of everything that exists, the logical exclusion of the identity of two things in nature, the dialectical knowledge of a thing in itself [4].

Forensic knowledge of an object through its identification occurs by establishing identification features, identifying its specificity and originality and comparing the identified features of identifiable objects [5]. In the established practice of law enforcement agencies in the context of investigating crimes in the context of non-obviousness, when resolving the key issue of identifying persons involved in crimes, the key focus is normally on the actual procedure of identifying these individuals according to the features of the structure of the face betraying the uniqueness of their appearance [6, 7]. At the same time, wearing hygienic masks in public places significantly limits the perception and fixation of a person’s face thereby hiding half of his/her external features. Thus, the number of perceived and recorded identification features is halved; it casts doubt on their sufficiency for identifying a person by facial features.

## 2 Materials and methods

During the research into the problem, the authors used as the research material the legal documents regulating the sanitary and epidemiological well-being of the population by providing for restrictive measures aimed at countering the pandemic of the new coronavirus infection COVID-19. The authors’ research methods were the dialectical and materialistic method of cognition, analysis and synthesis of scientific information, generalisation and classification of factual data and situational modelling.

## 3 Results

The introduction of the unified face-mask requirements in all constituent entities of the Russian Federation legalised the presence of the masses of people in public places and other places of public concourse thereby changing our ethical understanding of the admissibility of virtually widespread wearing of masks by people, that is with their faces covered by more than 50% of the view. Mandatory wearing of personal respiratory protection equipment (masks) is prescribed for not only sick but also healthy citizens.

Before the announcement of the pandemic of the new coronavirus infection COVID-19, being in a subway car of a person in a medical mask covering the respiratory organs was perceived by others with fear of the possibility of infection or the presence of problems
with the immune system of that person, and currently being in the same subway car a person without a mask can be perceived in panic and even with apprehension of a person as an offender who openly shows his/her deviation. At the same time, a person sitting next to him in a balaclava, that covers not only the respiratory organs but also the forehead, eyebrows and even lips, is perceived as a ‘law-abiding citizen’, who can also turn out to be a criminal hiding from law enforcement agencies, which makes it more difficult to ferret him/her out. It is paradoxical that the presence and wearing of balaclavas in the 1990s of the twentieth century was a hallmark of the criminal manifestations of individuals associated with banditry and other forms of organised crime.

The above clearly characterises the problems of identification, the existence of which could not be foreseen by the founding fathers of forensic science, complicating identification by a material-fixed image. For example, the identification of a criminal, even from the photographs and (or) video recordings of surveillance cameras at the disposal of law enforcement agencies, as well as direct eyewitnesses of a crime event, no longer guarantees the successful identification of a person involved in a committed crime [8].

In addition, the identification by the victim in identifying the person who committed a crime against him/her, whose identity was unknown at the time of the direct commission of a criminally punishable act (for example, robbery), occurs according to the mental image of the person, which follows immediately after the indication of gender and approximate age of the offender. However, wearing a mask by a criminal at present creates obstacles even in determining the sex, does not even indicate that the offender’s mask does not hide the face of the sex opposite to that indicated by the victim.

The focus is shifting, since the masks actually depersonalise the identified object, create interference in the forensic identification in conditions of non-obviousness, and the unisex fashion in clothes, shoes, perfumes, hairstyles [9] etc. complicates the identification of the wanted person. For example, the presence of PPE (personal protective equipment) of the respiratory organs (masks) prevents the review and fixation on material and personal sources of evidence of the distinctive facial features of the wanted person covered by this mask, such as scars, moles, dimples, beard, lips and nose shapes and teeth.

The search orientation identification system used in the Moscow metro is based on FaceT technology and the Find Face application designed to identify passers-by and passengers in databases of law enforcement agencies, in the 2020-2021 pandemic also faced the ‘depersonalisation’ of the population. As a consequence, the number of wanted persons identified has decreased. In a sense, the introduction of the Face Pay face recognition system at all stations of the Moscow metro from 15 October 2021 is aimed at resolving the current situation, since with this system, the subject of identification and the object of identification essentially coincide in one person, because the passengers themselves voluntarily enter in the information transport system photos of their persons. The number of citizens, who upload their photos to this transport system, is gradually growing [10]. Paradoxically, for example, in the United States since July 2020, that is, almost with the onset of the pandemic, the largest companies IBM, and then Amazon and Microsoft, decided to introduce a moratorium on the use of face recognition technology for 1 year, in connection with which in order to protect the rights of citizens, a ban on selling software to the police and other law enforcement agencies in the United States was introduced [11].

Amidst the pandemic, the identification and study by law enforcement agencies of the functional elements of a person’s appearance, distinctive and unique features in the character and behaviour of a person involved in or related to a crime, according to available sources of evidentiary and other information, is of particular forensic importance. These identification features include gait, stroking, facial expressions and pantomimicry (habitual
postures, gestures etc.), as well as external manifestations of an unhealthy state (trembling of limbs, scratching, coughing, running nose etc.).

4 Discussion

The prospect of adoption by the State Duma of the Russian Federation of the draft law No. 17357-8 ‘Amendments to the Federal Law ‘Sanitary and Epidemiological Welfare of the Population’ and draft law No. 17358-8 ‘Amendments to Article 107 of the Air Code of the Russian Federation and the Federal Law ‘Charter of Railway Transport of the Russian Federation’, which provides for the introduction of certain restrictive measures at the federal level in order to prevent the spread of a new coronavirus infection (COVID-19), provides for the introduction of two-dimensional bar codes (QR codes) in public places, ‘visiting places where mass and other events, cultural organisations, public catering, retail trade (with the exception of organisations providing the population with food and essential goods, pharmacy organisations)’ [12], as well as for long-distance and international trips by trains and planes [13].

So, in Russia, QR codes are provided to three categories of citizens:
1) who have completed a full course of vaccination against the new coronavirus infection (COVID-19);
2) who officially recovered from COVID-19;
3) who passed a PCR test for the presence of coronavirus infection and received a negative result in the last 48 hours.

Consequently, the problem of forensic identification is currently directly related to the digitalisation of society against the backdrop of the pandemic and measures taken by the state to counter it, also by vaccinating the population against the new coronavirus infection (COVID-19).

As of 05 December 2021, with a total population of Russia of 146,024,000, the number of vaccinated is 68,029,825 (46.59%), and 58,695,024 (40.20%) are fully vaccinated [14]. Such population vaccination growth rate increases the number of QR code holders. For example, certificates of vaccination and past COVID-19 diseases, respectively, contain information about the personal data of its holders (name, date of birth, gender), as well as the information about their documents (passport series and number, SNILS (individual insurance account number), OMS (compulsory health insurance)), which, in turn, opens up new perspectives for identifying persons involved in crimes.

From now on, when investigating crimes, it will be enough to obtain information about all visitors to a particular place of public catering (for example, a cafe) or a cultural establishment (for example, a cinema) to establish the circle of QR code holders as persons subject to verification for involvement in a committed crime, and also interview as eyewitnesses of the crime.

In turn, QR-isation will minimise the illegal and unfounded prosecution of innocent persons by giving rise to alibis in the latter. For example, when trying to accuse a person of being at a crime scene in one area or region, with a QR code to visit a cinema when entering and exiting a cinema hall in another area will help avoid inaccuracies in locating and establish non-involvement in the crime committed. At present, the FBI independently came to conclusions similar to those of the authors [15]. At the same time, the American criminologist Benjamin Levin, back in August 2020, in his article ‘Criminal Law in Crisis’, called that the ‘crisis’ frame, although it provides an opportunity for reforms, ‘we should not allow the crisis frame to hide how the criminal system was in crisis long before the first tests for COVID-19 came back positive’ [16].

Of course, in practice, cases of the use of foreign or fake QR codes by citizens cannot be out of the question; however, the identification of this circumstance during the
investigation of a crime may lead these unscrupulous holders of QR codes to the corresponding criminal liability under Art. 327 of the Criminal Code of the Russian Federation (‘Forgery, production or circulation of forged documents, state awards, stamps, seals or letterheads’).

5 Conclusion

Due to new social and political challenges, forensic science cannot remain unchanged. The introduction of a mask regime as part of measures to counter the spread of the new coronavirus infection (COVID-19) has interfered with the activities of law enforcement agencies in forensic identification and identification of the persons they are looking for. The humankind is on the verge of an unprecedented forced society digitalisation carried out by the state against the background of the pandemic of a new coronavirus infection (COVID-19) [17]. The introduction of a QR code system will equally contribute to the identification of persons involved in or affected by a crime, and minimise the risk of illegal and unreasonable prosecution of the innocent.

The conclusions we have received regarding the problems facing forensic science allow us to talk about the need to comprehend a fundamentally new era of society digitalisation and its impact on forensic identification.

The causal relationship between the introduction of restrictive measures aimed at countering the spread of a new coronavirus infection (COVID-19) and forensic identification presented in the paper make it possible for us to talk about the practice of law enforcement agencies in special government regimes (martial law, state of emergency, high alert etc.).

The results of this work should be used in combination with other techniques for the prevention, detection and investigation of crimes.

We have found that the activities of law enforcement agencies for forensic identification of the persons involved and (or) touched by committed crimes during the transformation of legislation against the backdrop of a new coronavirus infection (COVID-19) will lead to completely new personal identification practices.

Our work shows how the introduction of government regimes previously unseen by the founding fathers of forensic science make their own adjustments to the forensic identification. We have shown that the introduction of QR codes, along with forensic identification, can meet the purpose of criminal proceedings (Article 6 of the Code of Criminal Procedure of the Russian Federation).

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Contemporary trends in the differentiation of criminal proceedings

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Abstract. The subject of the research is the differentiation of criminal proceedings and its current trends. The creation of optimal forms of legal proceedings taking into account the peculiarities of the stages and phases of the criminal process, the procedural statuses of parties to a criminal proceeding, the effective functioning of law enforcement mechanisms and the introduction of new digital technologies lead the authors to the need to study the differentiation of the criminally-remedial form. The methodology and research methods are based on several general scientific methods and techniques used by legal science. The dialectical knowledge method in the research made it possible to determine the essential features of the general trends in the differentiation of legal proceedings and its individual areas. With the help of the comparative legal method, general trends and features of the procedural form differentiation in the Russian Federation and some overseas countries have been identified. Based on the research results, it was concluded that the significance of the criminal procedure form lies in the fact that it provides a law enforcement regime, creates conditions for reliable conclusions on the case, contains guarantees for the protection of the rights and legitimate interests of parties to a criminal proceeding; in the modern context of development and improvement of criminal proceedings, the simultaneous and effective solution of the issue of differentiation of the procedural form and ensuring the rights of parties to a criminal proceeding is particularly acute; the development of alternative procedural forms in pre-trial proceedings aimed at speeding up the procedure should be subject to fundamental ideas, in particular the established requirement of a reasonable time.

Keywords: criminal proceedings, differentiation, parties to criminal process, stages of criminal proceedings.

1 Introduction

Currently, the development of the criminal process in Russia and overseas countries has many different and sometimes opposite vectors, among which are the simplification of criminal proceedings and the creation of complex and more thorough procedures, the
improvement of legal mechanisms for ensuring the rights of persons involved in the field of criminal proceedings and the introduction of alternative methods for criminal case settlement. The criminal process is improved as a whole as well as in separate and successive stages and phases, each of which can be characterised by special tasks, a pool of participants and other features. At the same time, any of the focus areas of development of the legal proceedings pursues a single goal, namely the promotion of a perfect procedural form for a given period of development of society, state and law. The creation of optimal forms of legal proceedings taking into account the peculiarities of the stages and phases of the criminal process, the procedural statuses of parties to a criminal proceeding, the effective functioning of law enforcement mechanisms and the introduction of new digital technologies lead to the need to study the criminally-remedial form differentiation.

Criminal proceedings are generally differentiated in an extensive way, involving the promotion and introduction of new forms and procedures into the process. So, after the entry into force of the Code of Criminal Procedure of the Russian Federation of 2001 (hereinafter referred to as the Criminal Procedure Code of the Russian Federation), a new trial procedure appeared in the criminal proceedings of the Russian Federation – a special procedure for making a court decision (Chapter 40 of the Code of Criminal Procedure of the Russian Federation), after the introduction, the criminal procedural law was supplemented by Chapter 40. 1 of the Code of Criminal Procedure of the Russian Federation, a pre-trial cooperation agreement [1] introduced by Chapter 32.1 of the Criminal Procedure Code of the Russian Federation [2], which expanded the forms of preliminary investigation (shortened form of interrogation).

It should be noted that the forms of pre-trial proceedings are differently differentiated in individual foreign countries. The most detailed analysis of the forms of interrogation can be found, in particular, in the works of G. Albertini, W. Fehr and W. Voser [3], as well as C. Blatter [4] and other scientists. So, in France, where interrogation can also be optional, it almost always de facto precedes the preliminary investigation [5]. Swiss researchers note that the separation of interrogation and preliminary investigation, which initially seems rigid, upon closer examination, turns out to be a fiction to a large extent.

Parties to pre-trial proceedings also have another differentiated procedural status. Thus, in Austria, the investigation begins, if necessary, with a check by the police or the prosecutor’s office of the existence of an ‘initial suspicion’ of a crime. At the same time, irrespective of the two options for starting the criminal process, it is the prosecutor who runs the investigation [6]. The prosecutor’s functions in the criminal process in Poland can be characterised as control and corrective. In fact, the prosecutor manages the pre-trial investigation. The purpose of the prosecutor’s involvement in criminal pre-trial proceedings is to ensure the legality, including, among other things, the validity and timeliness of the start of the investigation [7]. In Swiss criminal procedure, the prosecutor’s office is considered as the ‘mistress of pre-trial proceedings [8]. At the same time, an analysis of the Swiss scientific literature shows that the prosecutor’s office only in extreme cases proceeds with a preliminary investigation without a preliminary interrogation [9].

Introduction of Art. 186.1 of the Code of Criminal Procedure of the Russian Federation expanded the list of investigative activities by introducing a new procedure for obtaining information about connections between subscribers and (or) subscriber devices [10]. The procedures of the stage of initiating a criminal case were significantly updated, the latest changes of which [11] led to the manifestation of a new trend, the expansion of the list of investigative and other procedural actions allowed during the verification of reports of a crime.

This list can be extended.

The purpose of the article is to determine the most optimal areas for differentiation of the procedural form in the criminal proceedings of the Russian Federation.
2 Methods

The research is based on such principles as the unity of analysis and synthesis, the unity of the logical and historical; identification of links of different qualities and their interactions in the object; synthesis of structural and functional ideas about the object, which caused the need to use a variety of general scientific and private research methods (dialectical, historical, formal-logical, comparative-legal, method of comparisons and analogies, generalisation method). With the dialectical cognition method in the research, it is possible to determine the essential features of the general trends in the differentiation of legal proceedings and individual areas of differentiation of pre-trial and judicial proceedings, stages and phases of the criminal process, parties to legal proceedings etc. With the comparative legal method, general areas and features of the differentiation of the form of action in the Russian Federation and some foreign countries. The formal-logical method provided an analysis of the legislation that defines the theoretical and legal basis for the differentiation of the form of action.

3 Results

The differentiation of the procedure affected almost all aspects, from the stages and various proceedings to the procedural statuses of the parties. With regard to the development of the differentiation of the procedural status of parties, as a relatively new area for its improvement, it should be noted that this process has the same features as the differentiation of the form of action. For example, in developing the procedural status of the accused, the legislator offers the modern law enforcer several options for the procedural status of the accused depending on various conditions and situations.

It appears that none of the most complex forms of action are in themselves absolute guarantees against any judicial and investigative errors. Undoubtedly, differentiation should follow the way of rationalisation but with strengthening of the procedural guarantees.

The preliminary investigation can be characterised by the specifics of the tasks, process owners and their procedural status, the originality of the implementation of the principles of criminal proceedings, the specifics of the procedural activities and its legal regulation, and the form of the preliminary investigation cannot be pre-configured, it should be variable depending on the grounds.

The differentiation of forms of preliminary investigation has the same prerequisites as the differentiation of forms of judicial proceedings. The greater the public danger of a crime, the less hurry is needed, the greater the risk of error, which means that a higher level of ensuring the rights, freedoms and legitimate interests of an individual is needed. In cases, that do not pose a neither great public danger, nor are difficult to establish factual circumstances, simplified proceedings are possible but while maintaining guarantees of the parties’ rights. Therefore, an important basis for differentiating the form of preliminary investigation is undoubtedly that of the criminal law.

When determining the criminally-remedial grounds, it is proposed to take into account other criteria, the complexity of the investigation of the case, the public significance of the case or the degree of public interest (S.A. Margiev), the personality traits of the participants in the process, the degree of public danger of the crime and the suspect’s admitting involvement in the crime (V.D. Arseniev, F.S. Metlin, L.V. Smirnov).

Thus, the scientifically substantiated differentiation of the forms of pre-trial proceedings should be based on the most significant criteria for the criminal process. The division should be based on two groups of grounds. the first group is criminal law; the second group is criminally-remedial. The only criterion for a criminal law basis is the gravity of the crime committed. Since, according to the degree of severity, all crimes are divided into four
groups in the Criminal Code of the Russian Federation, the basis under consideration is of paramount importance in differentiating the forms of preliminary investigation. The criminal procedural grounds include the following: the difficulty of establishing the actual circumstances of a case; certain properties of the person in respect of whom the proceedings are being conducted, or of the person who has suffered from the crime; the special social significance of a particular crime; the opinion of the person who has suffered from the crime and the interests of the person in respect of whom the proceedings are being conducted.

4 Discussion

The existence of such a trend as the differentiation of the procedural status can be confirmed by the research results of some authors. For example, P.G. Marfitsin wrote about this quite a long time ago, ‘When granting a legal status to a particular party, there should be a certain differentiation. Some parties may have all of the listed rights or most of them, others may have only some’ [12]. Well-known processualist scientist Yu.K. Yakimovich noted in this regard: ‘The procedural status of the lawyer of a convict cannot be equated with the procedural status of a defender. That is an independent party in the process and its procedural position should be determined, first of all, in Section 2 of the Code of Criminal Procedure of the Russian Federation. The prosecutor in additional proceedings, unlike the main ones, does not prosecute. Most likely, by participating in the court when deciding on issues concerning early release, substitution of punishment or changing the conditions of its serving, the prosecutor is the body of supervision over the observance of laws. In this regard, Article 37 does not fully disclose the functional purpose of the prosecutor in criminal proceedings’ [13]. Yu.K. Yakimovich also has the following idea: ‘It is necessary to differentiate the composition of the courts when considering cases in the first instance’.

This position seems quite fair to us. However, it also determines the formulation of an important scientific task, namely the determination of the grounds, conditions and procedure for acquiring the entirety of the procedural status or only part of it. This task is closely interconnected with another, the inability to use all the procedural possibilities provided for a certain procedural status given there are legitimate interests and rights to be protected in criminal proceedings.

The research into the differentiation of the form of action in Russian criminal proceedings makes it possible for us to conclude that research into it is carried out permanently, at both fundamental and applied levels. So, in 1861, Emperor Alexander II ordered the development of new legislation, detailed drafts of procedural charters. On 20 November 1864, the Judicial Statutes were published, including the Regulations of Criminal Proceedings [14], according to which, in cases of private prosecution, the state prosecution bodies were completely eliminated from interfering in criminal prosecution; such cases were initiated as a result of the complaint of the victim and terminated by reconciliation; exposure of the accused before the court was provided in cases of private prosecution exclusively to the victim (Article 5). At the same time, reconciliation was not conditioned by compensation for harm, except for the case when the victim retained the right to a civil claim (Article 20). In cases of private-public prosecution, the victim was given only the right to initiate a criminal action [15].

I.Ya. Foinitsky noted that the Regulations of Criminal Proceedings gave the formal investigation the significance of a judicial investigation, dividing the preliminary investigation into inquiry and preliminary investigation in a new meaning, where the first stage is interrogation; the second one is the preliminary investigation; the third one is the judicial investigation. At the same time, he attributed the interrogation and preliminary
investigation to the preliminary research carried out by the police and judicial investigators, respectively [16].

S.V. Pozynshev pointed out that ‘in the preliminary proceedings, one can distinguish between stages: 1) preliminary investigation, which breaks down into a) pre-trial investigation and b) preliminary investigation; 2) bringing to trial; 3) orders prepared for the court’ [17].

In accordance with Art. 249-260 of the Regulations of Criminal Proceedings, the police was the main body of interrogation, the scope of authority of the officials of the bodies of inquiry was differentiated depending on whether it acted as a regular body of inquiry, or as a special one, or replaced the judicial investigator.

The foregoing allows us to conclude that the historical significance of the 1864 Regulations of Criminal Proceedings lies in the introduction in Russia of a mixed form of criminal procedure with its division into two stages, pre-trial and judicial, which differ from one another. Subsequent codifications of the provisions of the Russian criminal process were carried out within the framework of the mixed form of criminal procedure created by the Regulations of Criminal Proceedings and followed the path of differentiation of forms.

After the October Revolution of 1917, at the end of the 2020s of the 21st century, a lot of work was carried out to prepare a draft of a new Code of Criminal Procedure in order to simplify and speed up the criminal process [18]. The project carried the idea of simplifying and speeding up the procedural form in criminal cases in pre-trial proceedings.

With the adoption of the Code of Criminal Procedure of the RSFSR on 27 October 1960 and its entry into force on 1 January 1961, the Code provided for the conduct of a preliminary investigation in criminal cases in the form of interrogation (Article 120 of the Code of Criminal Procedure of the RSFSR) and a preliminary investigation (Article 126 of the Code of Criminal Procedure of the RSFSR).

In 1980, well-known processualist scientists N.S. Alekseev, V.G. Daev and L.D. Kokorev pointed out that the problems of the criminal procedural form were considered in a lot of works, and special studies were also devoted to them. Those issues are still being addressed today [19-22].

It should be noted that in the theory of the criminal process to this day there is no unambiguous definition of the term ‘differentiation’, or any unity of approaches to defining it. Processualist scientists understand the differentiation of the criminally-remedial form as a way of constructing a criminal process; property of the form of action, the trend of its development; area of development of the criminal procedural law [23]. A.A. Tarasov and N.A. Razveykina believe that the unity of the criminal procedural form does not at all exclude its differentiation, the idea of which is repelled precisely from unity. Any differentiation is derived from the common (unified) form [24].

5 Conclusion

The foregoing allows us to highlight the reasons that encourage the separation of the forms of preliminary investigation: the need to unload the investigative apparatus, focusing the attention of investigators on the investigation of grave and especially grave categories of crimes, saving procedural means, speedy investigation of the crime and transfer of the criminal case to court.

In accordance with international standards, the speed and efficiency of justice are one of the elements that are part of the guaranteed right of free access to justice for everyone, which firstly implies the right to be tried without any undue delay; secondly, the reasonableness of the duration of the trial (Part 3 of Article 9, paragraph ‘c’ of Part 2 of Article 14 of the International Covenant on Civil and Political Rights [25]; Part 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental
 Freedoms [26]). The CIS Convention on Human Rights and Fundamental Freedoms of 26 May 1995 provides that ‘everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’ [27].

When calculating the indicated (reasonable) time limits in criminal cases, the trial covers both the preliminary investigation procedure and the trial procedure itself. Therefore, one of the signs of the form of preliminary investigation – the term (time limits) – should correspond to reasonableness.

Thus, the simplification of the procedural form of the preliminary investigation should take place not at the expense of legality but in the interests of legality, since the differentiation of the forms of preliminary investigation makes it possible to take into account both the interests of criminal proceedings and the specifics of a case.

The foregoing leads to the following conclusions:

1) the significance of the criminally-remedial form lies in the fact that it provides a regime of legality, creates conditions for reliable conclusions on a case, contains guarantees for the protection of the rights of parties to legal proceedings;

2) the problem of differentiation of the forms of action in Russian criminal proceedings has a long history, and each historical period in the development of statehood has its own vision and ways to solve it;

3) in the contemporary context of development and improvement of criminal proceedings, the simultaneous and effective solution of differentiation of the form of action and ensuring the rights of parties to legal proceedings is particularly acute;

4) the development of alternative forms of action in pre-trial proceedings aimed at speeding up the procedure should be subject to fundamental ideas, in particular the established requirement for reasonable time.

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The main levels of criminological study of symbolic images

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Abstract. The presented study analyzes the structure and principles of the functioning of the criminological study of radical and extremist symbols. Levels of criminological analysis of extremist images, general scientific methods of theoretical knowledge with the help of which criminological science solves the problems in the field of research of images of radical and extremist character are considered. Aspects of the implementation of the functions of criminological research are indicated. The original basis for writing the article was as follows. Like other criminological applied projects, the construction of practice-oriented models in the field of radical and extremist symbols involves research into the social environments in which they will be implemented. The social environment of the organization of the proposed application project has objective and subjective sides. The objective side is represented by the radical and extremist environment in which the proposed project will be implemented. In turn, the subjective side of the social environment is a particular law enforcement agency implementing this project. Depending on the nature of the constructed project, one or another aspect of the radical or extremist environment in which it will be implemented is chosen. The effectiveness of the proposed developments for criminological science is justified by the fact that knowledge of the semantic content of symbolic images of radical and extremist nature is an important component of the employee training of operational units to counter extremism. At the same time, the presence of certain symbols in the radical and extremist community indicates a high degree of cohesion and ideological unity, which implies a determination to implement certain socio-political goals, including the use of violent means. Based on these aspects, the article analyzes the main levels of criminological study of symbolic images.

Keywords: criminological research, theoretical level, empirical methodology, criminological forecasting method

1 Introduction

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As a balanced theoretical and methodological science, i.e., applying meta-theoretical, theoretical, empirical and applied methods equally, criminology can use methodological techniques relating to all four levels of scientific knowledge in developing a research program on radical and extremist symbols. Within the framework of different paradigms of criminological science, it is possible to build programs of scientific research aimed at the realization of different cognitive and practical goals and therefore involve the creation of different models, which can apply both methods of one of the levels of scientific knowledge, and methodological techniques. Therefore, the phrase “criminological analysis of symbolic images of radical and extremist orientation” may have different theoretical and methodological content. This circumstance requires specifying the criminological research specifics in each case.

Even though each particular program of criminological study of radical and extremist symbols allows partial use of the theoretical and methodological apparatus of criminological science, it somehow expresses its attitude, albeit through denial, to all its levels. For this reason, it seems necessary to reveal the main tasks of each level of criminological research when analyzing symbolic images. This kind of consideration, which includes an analysis of the attitudes, goals, and methods of all four levels of criminological research, will be carried out within the framework of a balanced model of a criminological program. In relation to it, other models involving the use of methodological tools of one or more levels of criminological research are of a derivative nature. Therefore, it seems appropriate to first draw attention to the balanced research model to reveal the specifics of the criminological analysis of radical and extremist symbols in general, and then to characterize the chosen model of the proposed study. Consideration of a balanced research program model is tantamount to revealing the general methodology of criminological analysis of images for determining their extremist orientation.

2 Materials and methods

One of the most important features of criminological science is its ability to carry out applied research that can change the criminogenic situation in certain areas of social life. However, the most important condition for the success of applied criminological research is a detailed study of the empirical conditions of its implementation. For this reason, applied criminological research is preceded by empirical research that captures the state of the social environment in which the project will take place. Modern criminological science must take into account the needs and current state of modern society. In this regard, we believe that some methodological guidelines are quite effective. In particular, we agree with the opinion of T.M. Sudyakova, “In the conditions of the methodological pluralism observed in social sciences today, criminology experiences a natural process of formation of integrative approaches to the principles of conducting and interpretation of scientific research” [1]. T.M. Sudyakova’s position is consonant with the attitudes of such foreign authors as R.L. Akers [2] and G. Barak [3].

Modern criminology needs to understand the social, cultural and psychological determinants of the criminal personality. Based on the research of such authors as Kazberov P. N., Alekhin I. A., Kulakova S. B. “extremists and terrorists have such personal characteristics as a constant willingness to protect their “self”, the desire to assert themselves, and indifference to the feelings and desires of others” [4]. Some Russian criminologists (Voskobitova L.A., Malysheva O.A., Nasonov S.A.) believe that “the limits of knowledge of the defendant’s personality in criminal proceedings are directly caused by its forms and vary under the influence of their differentiation” [5]. General issues of the relationship between criminal behavior and verifiable personal attitudes were analyzed by us in the context of discursive representation of the studies of such authors as A. Aliverti
[6], A. Potts [7], N.A. Spiess [8], I. Nafstad [9], A. Radke [10]. We also relied on studies of the criminological characteristics of extremist and terrorist crimes. In theoretical and methodological terms, the most valuable were the works of such authors as J. Argomaniz [11] and G. LaFree [12]. Also the publication “Crime and Terror: Examining Criminal Risk Factors for Terrorist Recidivism” was very valuable for understanding the criminological characteristics of radical attitudes [13]. At the same time, based on these sources, we formed our own theoretical and methodological model of the study of the main levels of criminological study of symbolic images.

The theoretical level of research has certain advantages over the empirical level, as it allows presenting the phenomenon of radical and extremist symbolism in a holistic and evolving form. The most important tasks facing the theoretical level of criminological analysis of symbolic images should be considered:

- developing a categorical apparatus for the study of both individual symbolic images and their classes;
- constructing a holistic model of radical and extremist symbols, which includes all legally relevant aspects;
- considering the ideological component of radical and extremist symbols as the beginning that determines both their nature and the patterns of their development;
- establishing the main trends in the development of the language of radical and extremist symbols of both individual movements and currents of the main extremism types;
- determining the means of expression of the main processes in the development of ideology and socio-political strategies of various radical and extremist environments;
- formalizing the main results of criminological research on radical and extremist images through a specially developed symbolic language.

The main subject of the theoretical level of criminological analysis of images is the establishment of changes occurring in the ideology of the deviant form of political consciousness, affecting the nature, structure and patterns of development of radical and extremist environments. In other words, the main subject of the theoretical level of criminological research is not the direct meaning attached by a radical community in the symbolism, but the processes of socio-political and ideological order that conditioned its character. A focus on the sociopolitical preconditions and regularities of the emergence and change of symbolic images fundamentally distinguishes the criminological analysis of radical and extremist symbols from any other study. The solution to problems related to the disclosure of this subject is carried out by criminological science with the help of general scientific methods of theoretical knowledge, the most important of which are:

1) idealization method, which allows creating the simplest elements of various theoretical models for the study of radical and extremist symbols, which include the following concepts:
- radical and extremist environment;
- spontaneous, group and organizational levels of radical and extremist environments;
- ideology of extremism;
- radical political symbolism;
- extremist symbols;
- basic symbols of the main directions of radical and extremist ideology;
- derived symbols of radical and extremist symbols;
- recognizability, similarity, mixing of extremist symbols, etc.;

2) theoretical modeling method, aimed at capturing the symbolic expression of the main processes occurring in radical and extremist environments, through the creation of various ideal models, in particular:
- models of symbolic positioning of a radical or extremist community;
- models of symbolic fixation of the structure of a radical or extremist community;
models of the symbolic expression of the process of radicalization of the extremist community ideology;
models of symbolic expression of the transformation process of a radical or extremist community;
models of symbolic expression of the process of legitimation of the extremist community;
3) phenomenological method, which reveals the given meanings of symbolic images in different kinds of consciousness;
4) interactive method, aimed at revealing in the studied symbolic images the motivation for specific social emotions and actions, on which rely the members of the radical or extremist community and specific social groups;
5) formalization method, which allows expressing the knowledge obtained through the study of radical and extremist symbolism by:
formulating universal and particular patterns of creating symbolic images of various radical and extremist environments;
creating a special system of signs that records the nature of radical and extremist symbols.

The implementation of all of the above theoretical methods of criminological study of radical and extremist symbols cannot be carried out in “pure form” outside of any conceptual scheme. In this case, the choice of the conceptual scheme must be based on the specifics of the subject of study of radical and extremist environments as a field of implementation of extremist crimes. One of the main differences between this type of criminal activity is that it is focused on seizing state political power by attempting to mobilize the forces of certain social strata. Due to this circumstance, the conceptual scheme of applying methods of theoretical level of criminological analysis of radical and extremist symbols can be the concept of symbolic confrontation of radical and extremist environments with certain social strata. In its most general form, this concept, which is the antithesis of social communication theory, can be presented as follows.

3 Results

Extremism as a deviant form of political consciousness is aimed at actively influencing society, while, due to the presence of the image of the social enemy, it is focused on the consolidation of some groups and incitement of hatred towards other groups. Accordingly, the symbolic representations of radical and extremist communities contain the simplest ideologemes aimed at absolutizing certain values while categorically denying other values. At the same time, various radical and extremist communities are not always straightforward in their socio-political strategy and can build a fairly flexible social policy, which is the reason why they use a rather complex system of symbols that includes images that perform various social functions and implement various social tasks [14]. This circumstance allows the degree of rejection by the radical or extremist community of the current system of socio-political order and commitment to violent methods of political struggle to be recorded in symbolic images.

The implementation of this or any other concept involves not only the application of various theoretical methods of criminological research but also the study of a large amount of empirical material, outside of which it is impossible to obtain adequate knowledge either about the processes taking place in radical and extremist environments or about the forms and patterns of their manifestation, including through the use of symbolic images. For this reason, any genuine criminological theory is always closely linked to criminological empiricism. In this case, this connection is carried out not only on the principle of form and content connection but also methodologically, based on the use by all levels of
criminological research of formal-logical methods of thinking, such as analysis, synthesis, induction, deduction, analogy, etc. The close genetic connection existing between the theoretical and empirical levels of criminological analysis of radical and extremist symbolism makes it necessary to consider the research methods of empirical material in the field of symbolic images in more detail.

In contrast to the theoretical, the empirical level of criminological research is not explanatory, but rather collective, and plays a determining role in the analysis of images of a radical and extremist nature. This is largely because criminological analysis of symbolic images can be carried out by forces of the empirical level of knowledge, which is impossible for other levels of criminological research. The most important challenges facing empirical methodology in the study of radical and extremist symbols are as follows:

- developing a procedure for describing symbolic images used by radical and extremist communities;
- Identification of rules for comparing symbolic images belonging to both the same and different ideological traditions;
- compiling a range of questions to various categories of people who can provide information on radical and extremist symbols, and possible measures to counteract their use when promoting various types of extremist ideology;
- application of various mathematical models of data processing on the nature and distribution of radical extremist symbols.

This level is based on general scientific methods of empirical knowledge:

- scientific observation, which consists of systematic and purposeful observation of the chosen subject of research;
- scientific measurement aimed at revealing the quantitative side of the study;
- empirical experiment involving the observation of the studied object under artificial conditions to establish its latent properties.

In the field of criminological science, which is theoretically and methodologically directly dependent on sociology, these methods have been given a socio-humanitarian interpretation. The most important methods of empirical research in the context of their application in the study of various aspects of radical and extremist symbols should be recognized:

- descriptive method to describe the symbolic representations of various radical and extremist communities;
- quantitative and comparative method, which reveals the features of similarity and difference of symbolic images;
- criminological observation, which involves finding the researcher in radical and extremist environments without being part of radical and extremist groups to establish the role of symbolic images in them;
- questionnaires as a type of scientific observation method associated with interviewing individuals whose opinions are of interest to the study of radical and extremist symbols;
- content analysis, which is a type of scientific measurement method that allows establishing the frequency of references to various problems of studying radical and extremist symbols and countering the spread of extremist ideologies by representatives of radical and extremist environments, scholars and law enforcement officials;
- statistical method that allows identifying quantitative indicators of various phenomena of radical and extremist environments associated with the manifestations of interest in the relevant symbolic images.

The application of the empirical methodology to the study of radical and extremist symbols differs significantly from its application to other areas of criminological research. The most important features of this application are:

- close connection that exists between the empirical and eidetic descriptor;
use of methods of heraldic and aesthetic description;
problematic nature of using the empirical experimentation method in the study of radical and extremist symbolism.

The specifics of the criminological study of radical and extremist symbols are due to the close connection between the methods of empirical and eidetic descriptions. The empirical descriptions method consists of a detailed description of the studied symbolic image. Whereas the eidetic descriptive method involves revealing the symbolic meaning of the graphic symbols and colors of the emblem or flag. The term eidetic description is borrowed from E. Husserl’s phenomenology, in which it is used to refer to the process of describing the meanings (eides) of various sensual objects. When conducting criminological analysis, there can be a danger of confusing visual and semantic descriptions of objects. This can lead to a violation of the analysis objectivity of the criminological image. For this reason, it seems advisable to separate empirical and eidetic descriptions and to implement these methods at different stages of the criminological program. The importance of this distinction lies in the fact that eidetic descriptions are fundamentally different from empirical ones. These differences lie not in the fact that the former is carried out at the level of analysis and is purely reflective, and the latter is at the level of sensory perception and is inseparable from perception and imagination. The main difference between these methods is the clear fixation of the eidetic descriptor of the subjective element of the description. Thus, a criminologist describing the meaning of a particular radical extremist symbol must understand the consciousness to which the meaning of the object, colors and symbols he is investigating is given. For example, it is possible to discover the ideological message of a symbolic image both from the perspective of the radical or extremist community within which it exists and from the perspective of the social group that negatively views the community that developed and uses this symbolism.

One of the specific features of the criminological study of radical and extremist symbols is that it is closely related to heraldic, on the other hand, and aesthetic studies, on the other. Each of these types of symbolic image research has its specific language, rules, and purposes of description. Compared to heraldic and aesthetic descriptions, criminological descriptions are less developed, since in them the system of goals, norms and requirements is still in the composition stage. At the same time, the criminological description of images cannot mechanically borrow elements of heraldic and aesthetic methodology but must develop its own categorical and methodological tools.

Among the empirical methods of criminological study of radical and extremist symbols, the most problematic is the application of the method of empirical experiment. The difficulties arising from the application of this method are associated with limitations, both ethical and legal, as they most often involve infiltration into radical and extremist environments. However, this empirical method also finds its place in criminological analysis, in particular for revealing the specifics of perception and evaluation of symbolic images by different categories of persons.

This method is more applicable not in the field of research on radical and extremist environments, but the image analysis. This is largely because law enforcement practice knows many examples of concealment and transformation of extremist symbols to avoid legal liability. For this reason, in many cases, there is a need to divide the symbolic image into its constituent parts, consider them separately, compare the separated parts with other, already recognized extremist symbols, etc. These operations have a legal basis since current legislation prohibits the display of Nazi symbols and symbols of extremist organizations, and symbols similar to Nazi symbols to the degree of recognition, similarity and confusion. It is possible to identify the presence of extremist symbols in images of radical organizations only by using the method of criminological experiment [15].

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By its nature, the method of the criminological experiment is as close as possible to the fourth, applied level of criminological research. Its consideration within the framework of the empirical level is due to the fact that the change in the studied subject does not affect the change in social reality, but remains significant only for the cognitive process.

In the structure of the relationship between the theoretical and empirical levels of criminological study, the applied level plays the role of synthesis. This circumstance is because the truth of any theory is confirmed not only by its correspondence to reality but also by its effectiveness, i.e., its ability to change this reality. The latter circumstance is decisive for the distinction between empirical and applied levels of criminological study. These levels, unlike the meta-theoretical and theoretical, do not deal with ideal constructs, but directly with reality, but the methods of empiricism at this level reveal what exists in reality, while the methods of applied research create a new reality. Thus, criminological empiricism learns what “is”, and criminological practice creates what was not there before. In relation to the theoretical level, the applied level performs an evidentiary function, confirming the change of criminogenic situation, the truth and regularity established by criminalistic theory.

The most important tasks facing the applied level of criminological research:
- modeling of various possibilities of development of real criminogenic situation both under existing conditions and various changes;
- implementation of an expert assessment of the crime situation with binding recommendations to various public and private organizations;
- creation of projects for the activities of the law enforcement system as a whole, and its individual fields and structural elements in certain criminogenic conditions in particular.

All three of the above-mentioned challenges facing applied level criminological research are addressed by three appropriate methods:
- criminological forecasting;
- criminological expertise;
- criminological modeling.

The method of criminological forecasting belongs to the applied rather than the theoretical level of research because it is used to create models of developments that have not yet taken place in reality, including in situations of active intervention. In turn, the method of criminological expertise can be defined as applied, since criminologists who develop it seek to establish this type of scientific practice in law, which creates a normative basis for changing social reality. Finally, the method of criminological modeling is also an applied method because it is a synthesis of methods of criminological forecasting and criminological expertise, aimed at developing algorithms for the activities of law enforcement agencies.

Currently, the methodology of the applied level of criminological analysis of radical and extremist symbols is in its formative stages. Nevertheless, due to the modern applied function of criminological research, the analysis of symbolic images has legal relevance. The applied function of criminological research has two aspects of implementation – main and auxiliary. In the auxiliary aspect, the applied function of the criminological study of symbols is implemented as an element of socio-criminological models aimed at improving the criminal situation in countering the extremist threat. For example, an increase in interest in radical extremist symbols among young people, especially the creation of new subcultural symbols, can signal the need for certain preventive measures. In contrast, the main aspect of the implementation of the applied function of criminological analysis of symbolic images is related to the development of normative legal acts, and methodological recommendations to law enforcement agencies to counter the spread of extremist ideology using radical and extremist symbols. Let us consider the application of the applied criminological methods highlighted above in the main aspect.
The method of criminological forecasting in the field of applied research and the construction of practice-oriented models aimed at reducing the activity of radical and extremist groups allows predicting the emergence of new communities that use certain symbols based on an understanding of the logic of political and ideological processes.

In turn, the method of criminological expertise allows for the development and implementation of legal regulation of the use of political symbols in general and details the ban on the use of extremist symbols in particular.

Finally, the method of criminological modeling allows specifying situations of application of radical extremist symbols and reveals the algorithm of law enforcement in each specific case.

4 Discussion

One of the most important features of criminological science is its ability to carry out applied research that can change the criminogenic situation in certain areas of social life. However, the most important condition for the success of applied criminological research is a detailed study of the empirical conditions of its implementation. For this reason, applied criminological research is preceded by empirical research that captures the state of the social environment in which the project will take place. One of the subjects of counteraction to extremism are internal affairs bodies with a structure specialized in counteraction to the extremist threat – Main Directorate for Extremism Counteraction (MDEC of MIA of Russia), whose task is to organize and coordinate the work of regional centers for counteraction to extremism. Due to this, the implementation of various practice-oriented projects aimed at reducing the extremist threat within the activities of the Ministry of Internal Affairs is the prerogative of this structure. Therefore, the evaluation of a practice-oriented project in the field of countering extremism depends on the given structural unit of the Ministry of Internal Affairs.

The effectiveness of any applied criminological project depends on adjusting its original intent with the entity implementing it. If we project this scheme onto the project development process in the area of radical extremist symbols, it seems necessary to obtain information on the relevant issues from employees of regional centers for countering extremism, since it is these structural subdivisions of the Ministry of Internal Affairs that are most involved in countering the extremist threat.

We believe that the ability of operational units to determine the nature of an extremist community by the symbols they use is an important tool for the prevention, suppression, investigation and detection of crimes. At the same time, the level of knowledge of employees of operational units for countering extremism of radical extremist symbols should be defined as low. The successful implementation of any practice-oriented project in countering extremism and terrorism primarily depends on the level of training of law enforcement officers, including the level of scientific and methodological support for the process of timely identification of legally important trends in the development of radical and extremist environments;

These findings suggest that the process of developing an applied project in the field of countering the extremist threat using the knowledge of radical extremist symbols should be preceded by theoretical and empirical research in the studied field, which would allow on the one hand to reveal the most important trends occurring in the relevant social environment, and on the other – to form relevant knowledge, skills and abilities in the operational units. Thus, a criminological theoretical and empirical study of radical and extremist symbols should be regarded as a preliminary stage in the implementation of an applied project. This kind of project should be less about changing the attitudes of radical
extremist milieus and more about teaching relevant knowledge and skills to members of operational units.

5 Conclusion

Of particular importance within the criminological study of radical extremist symbols is the development of recommendations for detecting, documenting and suppressing the spread of extremist symbols for the practical work of law enforcement agencies. Such recommendations should not only contain images of symbols of organizations recognized as extremists but also target employees to detect images that require expert examination for compliance with the current legislation in the field of countering extremism.

Concluding the brief analysis of the structure and functioning principles of the criminological study of radical and extremist symbols, it is necessary to emphasize that in its ultimate goal it is aimed at preventing the spread of extremist ideology through the use of symbolic images, which play a major role in the promotion of radical and extremist ideas.

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Analysis of methods for the expert research into digital images

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Abstract. In this article, the authors raise a problem related to the forensic examination of digital images. Currently, digital images are increasingly used in judicial evidence; however, in science and practice there are no methods, including any expert ones, to verify the reliability of such sources of evidence. In the contemporary context, digital images are becoming an important source of information, which keeps up to date their forensic study methods. Some methods are used in the Russian Federation but they do not have a legal justification, nor have they been evaluated in the professional literature. The authors emphasised the use of an integrated approach in the study of a digital image, from determining the format and source of the image, to the study of its internal content. The article explores various methods for studying digital images, ranging from their visual inspection to the use of various software products, which, in the opinion of the researchers of the article, can be successfully used in practice when considering cases of various categories. Further comprehensive study of methods for evaluating digital images should make it possible to make wider use of existing ones and introduce new ones into expert and judicial practices.

Keywords: criminalistics, forensic examination, technical and forensic examination of documents, computer and technical examination, digital images, digital footprints

1 Introduction

A digital image is a file stored electronically on an electronic medium. The resulting images can be stored on local devices, transmitted over communication lines and freely placed on the Internet. When communicating with each other, people are increasingly using electronic means of communication, such as e-mail, social networks and instant messengers. They use it to send and receive great deal of visual information, images.

Today, electronic images are used, among other things, as evidence in courts, which in turn requires the study of existing techniques and methods that could confirm the image authenticity.

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2 Methods

The literature, as well as existing software tools and other techniques and methods for analysing images in order to identify the image authenticity, were studied.

The research draws on the prepared empirical base, which included images with changes made by special software tools. Thus, the images obtained are examined with existing digital imaging techniques.

3 Results

The methods discussed in this article are applicable to raster images in formats that use lossy compression algorithms. In particular, they are applicable to the most common and ubiquitous image file format that uses lossy compression algorithms – JPEG [1].

Today, visual evaluation remains the main method of phototechnical examination of images [2]. The main rule in the visual analysis of images is that the better the quality, the greater the number of signs of a fake can be detected in the image. The search for visual signs of image correction is based on the limitations of photo correction methods offered by Adobe Photoshop and similar programmes, on the inattention or low qualification of the person who performed the editing, differences in the quality of the original image and the image inserted into it.

When examining an image by a visual method, various techniques provided by the capabilities of programmes for viewing and editing images can be used. In order to notice foreign areas, the image is enlarged, each fragment is examined separately, and the brightness, contrast, and saturation settings of the image are changed to extreme values. Any of the image editing methods can leave signs accompanying the modified image.

It is relatively easy to detect visual artifacts in the form of repeated cloned areas of an image. In case of inattentive work, some part of the original image can be removed, or vice versa, traces of the substrate are visible, which were not sufficiently removed. This may manifest itself in the incidence of fragments of foreign origin in the image, such as spots or contours.

The traces of inserting another image are most clearly visible on an image, namely a poorly cut contour or a different colour. Usually, the inserted image looks alien in relation to the original image. This group of signs includes violations of the size, perspective, position, tilt, shadow and lighting and image light sources which can also be visually detected when examining an image.

However, the evaluation of any digital image is not limited to visual data. Additionally, many other aspects, such as metadata, the source from which the image was obtained, file name, structure and compression parameters of the received image, can be examined.

Metadata are additional information added to an image; it contains data about the conditions and methods for obtaining a file, the equipment with which the image was obtained, authorship, and even the coordinates of the place where the image was taken. There are standards for storing metadata, such as EXIF, XMP, IPTC and others; however, it should be noted that any of these formats is not protected in any way and can be easily changed, which deprives the metadata of an identification value. Metadata are essentially plain text, in electronic form, and can easily be deleted, modified, or copied.

It is possible to detect a mismatch between the internal (information attached to the file and file structure) and external content (information about the image obtained from other sources). The analysis of image metadata is based on the search for inconsistencies and errors of this kind. The absence of all or part of the metadata, that should be present, may indicate the presence of unauthorised changes in the image or an attempt to hide the
presence of such changes. However, this statement is not always true, because, for example, sending an image via a social network and re-saving destroys the metadata.

In this regard, an important feature of the image is the source of its origin. Source data make it possible to judge which hardware and software system (digital camera or scanner) or software (text saved in an image format or screenshots, the result of other programmes) was used to obtain or change the image. The software, with which the changes were made and the file, such as Adobe Photoshop was saved, is recorded in the metadata [3].

The traces of programme editing may remain in the image container, and they are typical of a particular programme image, such as tag names and file headers [4]. Therefore, not only the record made in the metadata allows us to estimate the image source. When creating an image with a camera or scanner, creating, modifying or saving an image by any programme, in particular when sending and receiving an image via a messenger or a social network, it is processed by a compression algorithm. In addition, each social network or application uses its own compression settings when saving an image.

It is easy to verify this by sending the same source image with a size of 4.19 MB and a resolution of 4000x3000 using different Internet resources. For Telegram, we get 89.5 KB and a resolution of 1280x960, for Vk and WhatsUp we get a resolution of 1600x1200, but the different sizes are 381 KB and 127 KB, respectively. These are only indirect data that roughly indicate the presence of differences.

It is quite a challenging task to manually analyse images; for a more detailed study there is a special software, JPEGsnoop [5] is a free utility that retrieves and displays many image parameters. By analysing the data, the programme creates a ‘compression signature’, a set of image compression parameters. Images created by the same software will have the same compression signature. The programme contains a ‘compression signature’ database for many popular programmes and devices, which can also be replenished.

Thus, with data on the structure of the received file, by indirect features contained in the metadata, the file name and its structure, it is possible to determine whether this file was sent via social networks or instant messengers, or it was saved by a device/programme, and also according to the data on the parameters of the compression used, install a specific device.

The compression method is far from the only feature; there are other indirect data. For example, certain brands of digital cameras or scanners use specific colour models that can be changed when editing an image. Among other properties, that allow you to associate an image with a specific device, you can name the settings contained in the device and used to form the image, such as Huffman tables, image size, quantisation tables and metadata representation method. Huffman tables and quantisation tables are set for each device by photographic equipment manufacturers, and their set is specific to a particular manufacturer and device model [6]. The use of these quantisation tables to establish a specific device is described in the literature [7].

It is also of great interest to use for the analysis of digital images the method developed by Dr. Neil Kravets – ELA (Error Level Analysis) [8]. A bitmap image is a matrix of pixels, each of which is given its own colour that has a numerical expression. Since an image in this format takes up a lot of space, it is both inconvenient and unreasonable to store and transmit it in a ‘raw’ form. To optimise the image size, various image compression algorithms are used, compression with no loss in quality and compression that degrades the parameters of the final image. Today, the most commonly used and transmitted lossy image file format on the Internet is JPEG.

When a JPEG image is edited and saved again, it is recompressed and loses some of the quality (colour data) when it is saved again. An image sample copied from outside creates a situation where the same image contains areas that have not been saved the same number of times. For example, the original photo was saved three times, but the inserted fragment was
saved only once. Thus, by assessing the level of errors contained in the image, you can see the layers of edits and the changes that have been made to the image. In this case, it is important that you can determine the specific fragments of the image that have been edited. To identify a modified image by the ELA method, special software products, for example, implemented as a website are used [9].

To identify changes in the image, you can use the method and software solutions for analysing the level of digital noise in images [10]. Digital noise is random changes in the brightness or colour of individual pixels in an image [11]. It usually appears as a result of technical flaws in imaging devices, scanners or digital cameras. Noise indicates the hardware origin of the image.

It can be difficult to visually see the noise; the noise analysis method is based on the inverse noise filter, which removes all parts of the image except noise [15]. When editing an image, some of the noise is lost by creating ‘ideal’ areas of the image, which look like dark areas after applying the filter. This method allows you to identify those changes that are impossible to notice with any other methods.

4 Discussion

The existing practice has developed in the following way. Today, courts accept copies of documents and images as evidence, whereby creating conditions for falsification of evidence submitted to the court [12]. The use of electronic evidence is very limited, and courts prefer to work with printed images certified by notary, at best [13]. There are proposals to recognise printed images as initial evidence. Interest is stirred by proposals to use automatic methods in the analysis of images, and the use of electronic images of documents [14].

5 Conclusion

All of the described methods have their drawbacks. Almost all methods of image analysis can only be applied to its original. You cannot apply them to a printed and scanned original image or a screenshot, since they are no longer the original image, and therefore do not carry meaningful information. The disadvantage of any visual methods of image analysis is the subjective view of an expert.

In fact, when editing an image, it is very difficult to take into account all aspects. On this basis, a comprehensive analysis of the image, taking into account the source of the image file, the visual and non-visual content of the file, and other traces, make it possible to establish with a high probability the presence of signs of a fake in the image.

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Criminalistic prevention based on monitoring of moods in internet space: problem statement

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Abstract. The article attempts to analyze the problems of identifying and monitoring of socially aggressive content in the Internet to develop measures of criminalistic prevention of criminal behavior at the earliest stage of finding out a criminal intention. It proposes the authors' understanding of criminalistic prevention oriented towards root causes of criminal and pre-criminal behavior. It also substantiates the need of a wider approach to prevention measures at the pre-criminal level, criticizes the concept of criminalistic prevention of crimes that is implemented only during investigation. According to the proposed concept, the criminalistic prevention must be oriented towards root causes of implementing a criminal intention as for intentional offenses and towards the development analysis of potentially dangerous situations as for unintentional and intentional offenses. It is important to underline that when undertaking involuntary acts, we are dealing with behavior motives rather than crime motives. To implement prevention measures more efficiently, the author suggests using a sentiment analysis of texts, modern psychological approaches to analysis of motivation for committing acts injurious to the public, and content analysis of user reviews, etc. The article gives a specific characteristic of the sentiment analysis depending on the level of data extraction based on modern scientific literature.

Keywords: criminalistic prevention, cyber-aggression, linguistics

1 Introduction

Criminalistic prevention is the today’s cornerstone of scientific advancements. This is related, first of all, with hi-tech development when the capabilities of preventing negative scissions of various processes are greatly increased. It should be noted that a hidden side of this phenomenon is qualitative refurbishment of criminals who often use new technologies to achieve their antisocial goals on a larger scale to maximize their criminal success.

In any case, the rational human behavior as a criminal selection of means and methods to achieve a socially dangerous result of criminal efforts can be calculated. In this connection, it becomes extremely relevant to organize prevention of negative development of social relations into a criminal domain. A very laconic and just characteristic of

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Criminalistics is given by A.V. Rudenko: “it is a science of objective links between primary concepts of crime, traces, investigation, solving and prevention processes” [1]. Recently, the latter processes have become the focus of that science. The experience of Russian and foreign colleagues in this context gives the necessary grounds for thought.

Criminalistic prevention represents a system of techniques and methods to prevent crimes and other negative scenarios at the pre-criminal stage, during and after crime committing. Criminalistic prevention must be oriented towards root causes of implementing a criminal intention (for intentional offenses) and development of potentially dangerous situation (for intentional and involuntary offenses crimes). It is important to underline that when undertaking involuntary acts, we are dealing with behavior motives rather than crime motives. In any case, the degree of behavior awareness in involuntary crimes and intentional offenses is different relative to socially dangerous consequence. But one must not completely abstain from analyzing behavior motives in involuntary crimes. On the one hand, human folly cannot be rationally understood and analyzed, but, on the other hand, individual examples show that the phenomena of negligence and self-reliance may take mass proportions. For example, drivers often overspeed only at certain road sections with high visibility while believing that the road situation is not dangerous.

Admitting relevance of the criminalistic tasks in creating methods and means of crime prevention, I.I. Ivanov interprets its contents in a narrow way. He believes that the criminalistics “develops technical, tactical and methodological techniques of investigative prevention activity implemented in solving and investigation of certain crimes” [2]. It is believed that there is an urgent need to develop criminalistic prevention at the pre-criminal level. Events of recent years show that the methods and techniques of analyzing anti-social climate in social media would allow preventing Kazan, Kerch and other more or less heinous tragedies. Moreover, automation of such monitoring together with applied criminalistic examinations would allow organizing comprehensive work in this area.

A conventional approach to the subject matter of the Russian theory of criminalistic prevention has almost sputtered out. The narrowness of the prevention approach during crime investigation is immanent to the most conventional theoretical-proofing concept of the subject matter of the criminalistics. Moreover, “criminalistics for investigation only” does not deal with technical methods, tactical techniques and methodological recommendations that can be effective at pre-criminal stages when a criminogenic situation of a certain crime is formed or when a criminal intention is determined before preparing to implementation of a criminal offense.

As the Internet develops, social media have become a powerful tool in propagation and transmission of intentions, opinions and feelings to a wide range of people, including hatred, violence, cyber-intimidation and aggression [3]. Recent years saw an increasing interest to online-identification of hatred, aggression, abuse, and, in particular, to automation of these tasks, together with an increasing exposure of the society to these phenomena. It is required to develop methods for processing of natural language specially oriented towards this phenomenon since basic word filters do not provide sufficient protection [4]. These methods can become a basis to take measures of criminalistic prevention.

2 Materials and methods

The methodology of this research is based on the hypothesis of possible verification of a criminal intent from a wide range of sources, mainly in the Internet, and further detailed processing of this information to develop grounds to use measures of criminalistic prevention. This hypothesis is supported by a wider interpretation of the concept of criminalistic prevention that is more efficient if it is implemented as early as possible.
provided there are sufficient grounds with no relation to the investigation of crimes or even not always in association with perspectives of its commencement. For making this hypothesis, an axiomatic statement is made that “intellectual analysis of social media has own potential to extract templates that can be useful” [5]. Fundamentally, typification of certain narratives in the Internet will allow concentrating efforts of prevention measures towards potential social danger.

Apart from the methods of analysis and synthesis, ascending from abstract to concrete, using relevant problems of increasingly emerging scenarios of mass murders similar to those in the Columbine school, there are efforts to typify data sources at the level of early identification. therefore, practical methods of sentiment and content analysis are proposed for verification of identity and firmness of criminal intentions to take prevention measures at the earliest stages.

3 Results

The mood analysis represents a multi-disciplinary field including computer linguistics, informational science in the field of search and processing of semantics, audio-materials and video, natural language, artificial intellect, machine learning, psychology and other sciences predominantly using the results of such synergy. The criminalistics must not be an exclusion. Interpretation of criminalistic prevention only in the light of a certain investigation of crimes greatly depletes existing capabilities, and crime prevention after the crime has occurred, which results in criminal prosecution, means an invariably losing position. In other words, crime prevention during investigation can be only done for preventing further criminal activity. This is obviously late prevention. No considerations on the purity of the subject matter of the criminalistics cannot play a decisive role here.

4 Discussion

Literature contains a narrow interpretation of cyber-aggression when it is understood only as actions of individual users that publish insulting comments without minding the psychological effect of their words and harm to the feelings of other people [6]. It appears that cyber-aggression represents posting any messages, images, audios, videos, other information with a destructive attitude towards human health, life, rights and freedoms of other people consisting in consciously forcing the inevitability of a violent solution of the conflict. Bravado must be distinguished from real intentions to commit violent crimes. It is clear that such conclusions are made based on several acts of cyber-aggression and cyber-intimidation. It has been once justly said that “one case cannot be a definite attribute indicating that involved users are victims of hooligans, but tracking their behavior after incidents in various social networks during a certain period can give a more accurate description of their profiles” [7]. Moreover, it is required to monitor not only individual actors in the virtual space and groups having the same interests. This is even more important because “in typical offline groups, values form the content and success criteria of joint activity of the virtual community as well as rules regulating it, defining hierarchy and forms of control and finally close the borders that separate the world and create collective identity” [8].

It is important to understand that cyber-aggression and cyber-intimidation do not exist separately from specific external conditions and personality features of a potential criminal. In particular, special researches have shown that cyber-intimidating behavior of a teenager is often closely related with the general negative influence on the formation of the personality in terms of cognitive development defects, which often leads to low educational
performance, involvement in risky asocial events, harmful habits, low quality of interpersonal relationships, self-aggression [9].

A widely used sentiment analysis of texts allows promoting various goods and services according to consumer reviews. In principle, context advertisement and spam acting as artificial intellect reflection about consumer preferences is also known to almost anyone who uses the Internet. Currently, the analysis of textual tone based on special dictionaries for Russian texts of about 35,000 words assigns each word a certain indicator consisting of five values. Special literature states that “each value defines the degree of word belonging to one class: extremely negative, negative, neutral, positive, extremely positive. The sum of all values for a certain word equals one. ... The last step is to calculate the overall tone of the sentence based on tones of component words” [10]. This mood analysis has various names: opinion mining, sentiment mining. The related research work is interfaced between computer sciences and linguistics. The objective of tone analysis can be divided into three sub-categories: 1) identification of subjectiveness; 2) identification of its force direction; 3) studying emotional overtone of words, phrases and documents [11].

A potential criminal does not live in separation from everything around. Restraint and unsociable demeanor are sometimes sublimated into a burst of aggression in social space of virtual reality in communication electronic services. If a criminally non-punishable stage of detecting a criminal intention is reflected in the Internet, it deserves special attention. If we analyze the case of Ilnas Galyaviyev notoriously known to whole Russia, his phrase “Today I will kill a large amount of biowaste and will kill myself” has not even been refined by the author though it is misspelled. It is believed that sentiment analysis could analyze the content posed by a potential criminal in social media to detect the aggressive and extremely negative attitude to the surrounding people at earlier stages, long before the tragedy. Ilnas Galyaviyev and many of his kind do not become monsters 20 minutes before committing their criminal intentions, but their aggression is expressed in videos, audios, texts (including songs and poems) of aggressive and auto-aggressive nature long time before the criminal event.

Apart from linguistics and cybernetics, an important role in automated selection of aggressive pre-criminal content must be played by psychology that shows advances in the analysis of motivation directly or indirectly related with implied or implied anti-sociality. Content analysis of social media texts allowed psychologists to identify groups of motives as shown through the link of aggression and auto-aggression (activity consciously or unconsciously intended to inflict physical or psychic harm to oneself): 1) motives of sadism, violence, inflicting harm to living beings (indexes of this category are images, videos and audios, images demonstrating violence against people and animals, songs and texts mentioning violence to various extents); 2) motives of masochism, auto-aggression, self-mutilation, self-damages (images, videos and texts demonstrating people conscious inflicting injuries to themselves, or masochism with respective attributes); 3) motives of eroticism expressed in naked body, sexually explicit poses, images of sexual intercourse (respective images, videos and texts); 4) motives of adopting criminal norms and principles (images, videos, audios and texts about weapon, specific symbols, specific jokes, messages in prison slang, etc.); 5) motives of isolation, detachment, distancing from people, non-acceptance, denial, insufficient attention and emotional intimacy (images and texts); 6) motive of depression, apathy, unpleasant or painful emotions and feelings, misery, physical and moral fatigue (images and other materials demonstrating spleen, despair, apathy, etc.) [12].

Sometimes, content analysis is used based on specially selected information in reviews of service users in Internet-applications, including aggressive reviews. Not all consumers of such specific product (including games) are sincere in expressing their attitude towards violence. Sometimes, bravado can be taken as true intentions. Falsely pretending as an
aggressor in the Internet is often used only for recognition, drawing attention, e.g., for so-called hype. Content-analysis methods are widely used to understand overview data created by users especially in those research areas where the existing theory is limited. Taking into account rare use of content analysis of consumer reviews, an inductive approach is used in most cases to development of the coding structure [13]. This partial-to-general approach opens an insight into the target audience of aggressive content and gives more efficient overviews by groups and types of consumers. Apart from reviews, the operators of Facebook, Twitter, Reddit, Riot platforms possess a lot of evidential information about misanthropic utterances who sometimes have to explain users that such messages are unacceptable. Interesting information is often contained in user claims about unacceptable content [14].

Foreign literature proposes classification of sentiment-analysis of types based on the level of data extraction: a) level of characteristics or aspects; b) level of document; c) level of sentences. Mood analysis methods are considered in terms of two types of techniques: 1) methods based on vocabulary (e.g., on solution trees such as k-Nearest, related (k-NN), conditional random field (CRF), hidden or Markov Model (HMM), single-dimensional classification (SDC) and sequential minimal optimization (SMO) connected by methodologies of mood classification); 2) methods based on machine learning (methods are implemented by extracting sentences and levels of covered aspects; functions consist of parts of speech (PoS): tags, n-grams, bigrams, unigrams and word sets; machine learning contains three types of sentences and aspect) [15].

5 Conclusion

At the level of crime prevention, the criminalistics must become a starting point for combining efforts of cybernetics, linguists, psychologists, experts from other related fields in development of automated software for law-enforcement authorities to identify a criminogenic dangerous content, verify the extent of danger to social security, find out respective persons and apply preventive measures to them. Obviously, such approach becomes efficient only when the opportunities of criminalistic prevention are interpreted as widely as possible.

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Individual aspects of proof in bribery cases

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Abstract. The article is dedicated to relevant issues of proof on criminal cases of corruption. Legislation and literature sources for bribery activity and legal investigative practice are used to analyze certain aspects of the proofing process in criminal cases of bribery, including definition of the subject matter of proof, qualification of mediation in bribery, contents of the legal status of an official as a subject of crime, searching for possible sources of evidentiary information. The stated judgments and formulated conclusions can be used in lawmaking and in law-enforcement activity (especially when qualifying the considered crimes and proofing the fact of criminal activity).

Keywords: bribery, proofing process; qualification of crimes; mediation in bribery; official; subject of bribery

1 Introduction

Currently, bribery still remains a serious problem for many countries of the world. Many foreign and Russian scientists study this problem [1-3].

According to Ramdani and van Witteloostuijn, bribery is defined as “the corrupt payment, receipt, or solicitation of a private favor for actions or decisions from influential or powerful agents or authorities which could be public officials, corporations or people inside corporations to generate private benefits of the briber” [4].

Heidenheimer distinguishes three shades of bribery: black bribery, gray bribery, and white bribery. Black bribery is a particular action that by majority consensus of public opinion should be condemned and punished on grounds of principle. Gray bribery implies that limited elements in society, usually elites, may want to see the actions punished and that the majority may well be ambiguous. White bribery is tolerated by the majority of both elite and mass opinion, and attempts to punish this form of bribery are not likely to find public support [5].

The dictionary by S.I. Ozhegov defines bribery as an official crime – taking bribe. A study book edited by A.I. Rarog states: “Bribery as a collective term includes three crimes: bribe-taking (Article 290 CC), giving bribe (Article 291 CC), and mediation in bribery (Article 291.1 CC). These crimes are inseparable from each other and exist in close relationship, so we believe it reasonable to combine these terms into the same definition.

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The analysis of judicial practice results in a conclusion that it is important to correctly qualify this act and hold criminally liable those guilty in giving bribe and to account for grounds for release from criminal liability for giving bribe.

2 Materials and methods

The authors used regulations covering criminal liability for bribery when studying this issue. The research methods used are dialectic materialistic method of cognition, analysis and synthesis of scientific information, generalization and classification of actual data, comparative analysis.

3 Results

The law-enforcement practice of criminal cases in corruption crimes faces various challenges due to specifics of legislative regulation of the procedure for their preliminary investigation in various countries [6-9].

Law-enforcement authorities often have serious problems at all stages of criminal proceedings. Crimes are difficult to identify, and investigation often leads to legal decisions of illegality, inconsistency of charges, insufficiency of evidence, and procedural inadmissibility of such evidence. There is a lot of reasons for that. One of the most important is challenges related with proofing the fact of bribery.

Certain aspects of this activity will be considered through the following criminal case.

S. was accused of committing a crime provided for by Part 2, Article 291, Russian Federal Criminal Code, e.g., bribing an official via a mediator on a large scale.

According to the investigator, S. being a sole entrepreneur and a representative of an entity engaged in approval of construction facilities of one of residential complexes of Krasnodar developed a criminal intention to obtain a permit for construction within a short term by bribing an official of the executive authority via a mediator D.

By implementing this intention, she agreed with D. that she would provide her with documents necessary to approve the construction of respective facilities and would transfer money in the amount of 65,000 Rubles for payment of her services as a mediator and to transfer the bribe to the official. D. agreed to act as a mediator for transferring preliminary inspected documents provided by S and money transfer to her acquaintance official K. for a construction permit within the shortest term possible.

D. fulfilled the instructions and e-mailed K. the documents received from S. S. transferred the agreed amount to the banking card of D., and D. transferred K. 30,000 Rubles on the same day.

According to the investigator, S. committed a crime – bribing an official via a mediator on a large scale as envisaged by Part 2, Article 291, Russian Federation Criminal Code.

According to Article 8, Russian Federation Criminal Code, grounds for criminal liability are committing an act representing all attributes of crime envisaged by criminal law. Therefore, no elements of crime in the act prevents imputing criminal offense to a person.

The elements of bribing imply transfer of a bribe personally or via a mediator to an official for taking actions (omission) in favor of the giver or persons represented thereby if such actions (omission) are within the scope of powers of the official or if such official can solicit these actions (omission) due to its official position [10].

In this manner, the bribery addressee is only the official, which must be understood by the giver [11]. In this situation, the money in the amount of 30,000 Rubles was transferred
to K., the secretary of the construction approval commission. So, the question is whether K., the commission secretary, is an official.

At the time of the criminal behavior, K. was the chief expert. Based on Clauses 1 and 2 of Duty Regulations No. 120 approved on May 28, 2014, appointment and dismissal of this specialist belonging to the higher category of positions of federal civil service is done by the head of the department. In accordance with Clause 6.2 of the Regulations, this specialist fulfills functions necessary for the head of the department to implement its powers in addressing issues of providing electronic support of flights and airborne electrical communication in organization of air traffic. The content of Clauses 6.2.1-6.2.10 of the above document confirms that K. was engaged in technical preparation of documents, their accounting, analysis and provision for review by the commission taking decisions on construction approval, but she did not take any legally relevant decision. This conclusion is confirmed by Clause 11 of the duty regulations stating that the chief expert is not entitled to independently take management decisions since it is not provided with regulatory powers. Moreover, this is directly resulted from literal interpretation of Clause 16 (as updated on October 27, 2017) setting out that this specialist provides no state services.

In accordance with the internal regulations, K. was not a member of the commission but its secretary taking decisions on approval of construction facilities. It did not fulfill functions of an official either permanently, temporarily or under a special power, and did not fulfill organizational, regulatory, administrative or business functions. In this connection, special attention should be paid to the fact that, pursuant to Clause 1 of Order No. 24 of the Plenum of Russian Supreme Court dated July 9, 2013, On Legal Practice of Bribery Cases and Other Corruption Crimes, settling the question of whether a corruption crime has been committed by an official must take into account respective explanations contained in Order No. 19 of the Plenum of Russian Supreme Court dated October 16, 2009 On Legal Practice of Cases of Abuse of Office and Exceeded Authority. Clause 22 thereof enquiring into what regulations and other documents set out rights and obligations of the accused official specifying them in the adjudgment and indicating these rights and obligations whose abuse or exceeding it is charged with, referencing to specific norms (article, part, clause).

In this manner, no legal regulation of K. powers peculiar of an official prevents its being admitted to be the same. According to Clause 3 of Order No. 24 of the Plenum of Russian Supreme Court dated July 9, 2013, On Legal Practice of Bribery Cases and Other Corruption Crimes, actions (omission) that are in the scope of powers of the official are such actions (omission) that it is entitled to or must undertake within its competence (for example, reducing the terms of considering the giver’s application, accelerating decision-making process by an official, taking decisions within its competence or at its own discretion permitted by law, which are most favorable for the giver or persons represented thereby) [12, 13].

However, there is no evidence in the case materials that K. undertook such actions. According to the investigator as given in the indictment, K. implemented her criminal intention caused by a lucrative desire for illegal material enrichment, knew that the period for considering such applications is up to 30 days, despite other applications previously received in similar issues and pending for approval, and, from 15.12.2017 to 20.12.2017 (exact time not identified), gave highest priority to analyze the information contained in documents received from K. and prepared them for consideration by the construction approval commission while she understood, being familiar legislation and law-enforcement practice, that there were no grounds to reject the approval of construction facilities.

The statement of the first-priority actions of K. in analyzing the completeness of information in documents received from K and prepared for consideration by the construction approval commission, which damaged similar actions in relation to
applications from other persons pending approval in similar issues, requires proofing. To find out the circumstances of the crime in terms of K. taking actions within its powers for receiving a bribe, the investigator must identify the maximum period for considering such applications and compare it with the period of consideration of documents received from D., but also it must prove

- that receiving documents by K. from D. is exceptional, e.g., there has been no e-mailing of documents either before or after the charged crime by either D. or other persons entitled to transfer such documents to K. and commission members;
- that there is a compulsory requirement to have meetings of the construction approval commission more than once per month and that the commission has met this requirement;
- that there have been meetings of the commission from December 20, 2017 to January 14, 2018;
- that there are other previous and pending applications from other persons – the date, contents, and applicant must be identified;
- that the department head has instructed to review these previous applications of K.;
- that the questions to be settled in connection with these applications are similar;
- that the document packages supplied together with these applications are correct and complete;
- that there are no grounds to reject approval of construction facilities for these previous applications;
- that K. failed to submit to the commission previous application.

Duties of D. as given in the job description do not indicate that she fulfills functions of an official or organizational, management, administrative and business functions in a state authority or a company whose majority interest is owned by the Russian Federation. Therefore, D. is not a subject of bribe-giving either.

Based on the above, a conclusion must be made that K. cannot be admitted as a subject to bribery due to no respective powers that are typical of an official according to Note 1 to Article 285 CC RF (as amended by Federal Law No. 265-FZ dated July 13, 2015 effective at the time of committing the incriminated act). Accordingly, the actions of S. have no elements of crime as envisaged by Article 291 CC RF suggesting an official as the addressee of bribe giving. Bribery comprising three criminal offenses – taking bribe, giving bribe, and mediation in bribery – forms a situation of so-called necessary accessory offense.

S. multiply interrogated as a suspect and accusable gave consistent and uncontroversial testimony that in December 2017 she was responsible for construction approvals and communicated with D. learning from someone (she could not remember who) that D. could issue documents necessary for approval.

This was necessary because the construction approval commission often rejected documents due to their incompleteness and errors. D. checked the documents, made corrections and recommended to correct some inaccuracies, so the documents were then registered and submitted for approval. A positive decision on approval of construction was issued on December 20, 2017. She did not ask D. to accelerate the approval process.

On December 14, 2017, the assistant of S transferred money to the banking card of D. issued by Sberbank in the amount of 65,000 for the provided consultation services in checking and correction of documents necessary for approval. S. did not know that D. had connections and that she can affect the approval process. She was not acquainted with any employees of that organization and did not know who K. was and what were her relations with D.

D. multiply interrogated as a suspect and accusable testified that since 2016 people started to ask checking documents before official claiming for approval of construction facilities, with promises to express gratitude. She started to do this on a permanent basis receiving gratitude in the amount she never called. Usually, money arrived after positive
approval. When she was asked for approval, she submitted prepared and checked documents to the e-mail of K. and asked her to double-check and review them. Then she might have called and ask about them since she believed herself responsible because she consulted in drawing up such documents. K. did not say that she took money for such services. She did not transfer her anything for accelerated approval. Transfer of money to K. was return of debt. As for S, she does not remember her.

K interrogated as a suspect and then accusable negates that she received money through D. on December 14, 2017 from S for settling the issues of accelerated approval for construction. D. transferred her money several times but as return of debt rather than settling respecting issues. K. did not provide any information about S. and her appeal for accelerated approval through D.

Other materials of the case in possession of experts (transcripts of witness interrogation and physical confrontation) contain nothing about S. transferring money to D. for acting as a mediator in giving bribe to an official for accelerated settling of the issue.

In this manner, there is no indication that S. realized that she transferred a bribe to the official via a mediator. Moreover, the materials show that she did not realize the fact of money transfer from D. to K. Therefore, it can be concluded there are no elements of giving bribe in her actions of transferring money to D. for her consultation services.

It is also impossible to impute S. actions envisaged by Part 2, Article 294 CC RF (Commercial bribery). When transferring money to D., she realized that she was a person fulfilling management functions in a commercial organization. Providing consultation service cannot be deemed as management functions that are similar in essence with organizational/management functions of an official interpreted in Order No. 19 of the Plenum of Supreme Court of the Russian Federation dated October 16, 2009 (amended as of June 11, 2020) On Legal Practice of Bribery Cases and Other Corruption Crimes as follows: “Organizational/management functions shall mean powers of an official related with personnel management in a state authority, state or municipal institution (its structural unit) or management of individual employees subordinate thereto, while forming staff lists and defining duties of each employee, arranging the procedure of employment, applying incentive or remuneration measures, disciplinary sanctions, etc.

Organizational/management functions include powers of decision-makers having legal significance and entailing certain legal consequences” (p. 4) Therefore, it becomes quite obvious that the consultation activity cannot belong to management activity. S. multiply stated that she transferred money to D. in the amount of 65,000 Rubles, but such transfer for the provided consultation services was part of the civil fee-based service contract. The Civil Code contains no special requirements to the form of a fee-based contract, so it is subject to general provisions of form of transactions, but the drawback of a fee-based service contract constituting failure to comply with a simple written form of transaction limits the parties in means of proof and cannot unambiguously indicate to absence of civil relations between them and an illegal (such as criminally liable) nature of their actions. D. does not deny the testimony of S. indicating that she received money for consultations on correct preparation and collection of documents necessary for construction approval within the area near the airfield.

The completed analysis concludes that the actions of S have no elements of crimes as envisaged by Part 2, Article 291, Russian Federation Criminal Code, e.g., giving bribe to an official via a mediator on a large scale, as well as no elements of any other crimes envisaged by the criminal law.

4 Discussion
Giving bribe cannot have place objectively without taking it since this action suggests mutually conditioning dependency between functions of several jointly acting persons (giver, taker, mediator if any). Statement of no bribe taking pre-determines no giving [14].

But we must take into account the subjective component inherent to the considered situation: subjects of these crimes must realize such mutual causality and interrelation of actions committed by them [15]. In this plane, each of them may have a subjective (actual) error. The giver may be mistaken about the true properties of the addressee of an illegal gratification mistakenly taking it for an official, which he is not, in fact. In this case, the quasi-giver shall be criminally liable for attempted bribery.

5 Conclusion

In this manner, the analysis of the opinions of scientists, investigative and judicial practice concludes that the issues of proof in criminal cases as envisaged by Articles 290, 291 CC RF are relevant today and need improvement and deep criminal and criminalistic analysis.

The stated judgments and formulated conclusions can be used in lawmaking and in law-enforcement activity (especially when qualifying the considered crimes and proofing the fact of criminal activity) during new scientific researches in this area.

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Some issues arising in the course of the environmental assessment within the framework of litigation settlement

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Abstract. Construction in its historical development has gone a long way from the creation of primitive dwellings to the construction of modern multifunctional complexes of buildings and structures. Along this path, a complex and multifaceted system of public relations has been formed in the field of construction and operation of construction facilities, which today is inextricably linked with the ecological impact on the environment. One of the essential features characterizing this system is the conflict caused, first of all, by the lack of developed competition and the imperfection of its legal regulation. Consideration of many controversial situations within the framework of environmental studies arising during the construction and operation of buildings, structures and constructions is carried out through legal proceedings. The resolution of such conflicts is impossible without the use of special knowledge in the field of compliance with environmental requirements established by technical regulations and legislation in the field of environmental protection, in order to prevent the negative impact of such activities on the environment. The appointment and production of judicial environmental impact assessment is the most effective form of their implementation in modern legal proceedings. Expertise is, first of all, a study. Judicial expertise, respectively, is a sturdy performed in the course of legal proceedings. This is one of the forms of using scientific and technical achievements in criminal, civil, arbitration and administrative processes. Due to the judicial expertise, the actual data important for the correct case closure is established.

Keywords: judicial expertise, special knowledge, environmental protection, environmental expertise, litigation, expert opinion, legal proceedings

1 Introduction

The most complete and yet concise definition of judicial examination is given by Federal Law No. 73-FZ of May 31, 2001 “About the State Judicial and Expert Activities in the Russian Federation (hereinafter — the Federal Law on SJEA): “Judicial examination is a procedural action provided for by the legislation of the Russian Federation on legal proceedings.”

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proceedings, including conducting research and giving expert opinions on issues requiring special knowledge in the field of science, technology, art or craft”.

Having specified the field of special knowledge, i.e., replacing in this definition “special knowledge in the field of science, technology, art or craft” with “special construction and technical knowledge”, we will get the definition of the judicial environmental impact assessment.

Judicial and expert activity is performed by three primary groups of experts.

1. State experts, i.e., employees of state judicial expert organizations — specialized institutions (subdivisions) of federal executive authorities, executive authorities of constituent entities of the Russian Federation, provided for in Article 11 of the Federal Law SJEAL. A state judicial expert is a certified employee of the named institution who performs a judicial examination within the framework of his official duties.

Currently, there are several main systems of state judicial expert organizations: in the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Health, the Ministry of Defense, the Federal Security Service, the Investigative Committee and the Customs Committee.

2. Employees of non-governmental judicial organizations (these are non-profit organizations: non-profit partnerships, private institutions or autonomous non-profit organizations established in accordance with the Civil Code of the Russian Federation and the Federal Law “On Non-Profit Organizations”).

3. Private practicing experts, i.e., knowledgeable persons who perform judicial expert activities on a permanent basis, without being employees of the said organizations.

The need for legal proceedings to use special knowledge in the field of environmental protection is constantly growing. The increase of pace and scale of construction in Russia creates conditions for the sustainability of this trend.

2 Methods and results

The general scientific methods include, first of all, sensory-rational and mathematical methods. The former combines the principles of both sensory and rational cognition; it is known that the phenomena of reality should be perceived not just as a sum of separate, isolated from each other elements, but as their sum, systematized in a certain way [1]. Let us consider the general sensory-rational methods most often used when conducting research by an expert constructor.

A. Observation. The basis of any observation is the ability of a person to directly perceive sensory images of the objects being studied. These images are formed from sensations that arise under the influence of external factors on our senses. The result of such an impact depends on:

• the nature (characteristics) of the observed object;
• on the state (efficiency of perception) of the observer’s sensory organs;
• on the level of his professional training (the ability to identify those aspects, properties and characteristics of the studied object that are relevant to the subject of examination);
• on the characteristics and condition of the monitoring devices and instruments used.

Thus, “sensation, sensory perception is not a pure image of the observed objects, but a kind of mix containing information about the properties of the object, the means and conditions of observation” [2].

The observation carried out by an expert is related to the solution of a certain task and is of a orderly, systematic nature; it is undertaken in order to study the subject, the phenomenon. Inspection is an integral part of expert examination. Some signs, sides and
relations of the objects of expertise, established by observation, may have evidential significance, while others may serve as a basis for structuring versions, further study [3].

Through observation, an environmental expert establishes the fact of the presence (absence) of an object, its status, and the relative location of objects.

During the examination, the expert gets a general picture of its status, at the further stages of the study, with the help of certain methods, the expert specifies the results of direct visual perception and presents them in a generally accepted form.

Efficiency of using the observation method largely determines the entirety of the study and the reliability of the conclusions reached by the expert. Focus and good organization during observation not only make it possible to perceive the observed object as something complete, but also make it possible to recognize its status, changes, distinguish details, establish some of its connections with other objects.

B. The description is understood as recording the results of observations by means of plain text, figures, numbers, graphs, diagrams, symbols, etc. In this case, the information is generalized.

The description is divided into qualitative and quantitative, complete and incomplete, ordered and disordered, etc. The description is carried out orally or in writing [4]. In forensic examination, this is, first of all, an indication of the signs of the object of study. All the established features can be described (both essential and non-essential for solving a certain task) or only some that are relevant for this study) [1]. The first takes place, as a rule, at the initial stages of the inspection, when the expert, for example, has not yet developed a definite version about the reasons for the violation of technical regulations and legislation in the field of environmental protection in order to subsequently differentiate the signs taking into account the hypotheses of what happened (this is inherent, as a rule, novice experts). The second, respectively, is an attribute of considerable expert experience and is realized when understanding (at least in the first approximation) the causes of the emergence and development of destructive processes. The described signs are established by observation or other methods.

There are direct and indirect descriptions. Direct means such a description, which is carried out by an expert to secure the results of direct observation, it consists in fixing the features observed by the knowledgeable person himself during the observation process or at its end (from memory). The indirect description is also carried out by the expert himself, but includes features of objects perceived by other persons or identified through technology [1].

The expert describes all the results of the inspection in detail in the research part of his opinion, which reflects the circumstances of the scene of the incident, the location of objects is indicated. Then the data on the scientific and technical methods and means used by the expert to identify properties and features of the objects necessary to solve the issues are given. In addition to using such a means of fixation as a description, the expert draws plans and diagrams (the method of geometric constructions), makes photo and video shooting.

B. Comparison is a juxtaposition of properties or features of two or more objects. This research method allows us to identify the general and specific in phenomena, processes, events, to determine the stages and trends of their development. Its application assumes the presence of at least two objects of comparison. They can be:

• specific material formations;
• actual data and their sources;
• mental images, representations, concepts;
• conclusions and assumptions;
• results of actions [1, 5].

In logic the use of comparison follows certain rules such as:
• comparison is permissible only in relation to homogeneous concepts reflecting homogeneous objects and phenomena of objective reality;
• when comparing, it is necessary to use only those features that are of significant importance.

In comparisons made by a judicial expert, the features frequency of occurrence is of great importance. The less frequent they are, the more important the result of the comparison is

**G. An experiment** is an empirical action, an artificial systematic change in the conditions of observation of a phenomenon, its connection with other phenomena [6]. The experiment differs from observation by the active intervention of the experimenter in the processes of development of the phenomena observed by him. Any experiment is based on modeling the phenomena under study.

“Experimental verification of the proof,” — R.S. Belkin and A.R. Belkin note, — “means experimentally establishing the possibility of the existence of this fact, and precisely in this particular situation, due to the content of this proof” [7]. Due to the fact that in order to perform experimental actions in construction conditions, it is usually necessary to involve witnesses, defendants, and, when possible, victims, as well as machines and mechanisms, in some cases it is advisable to suspend the production process. In addition, the experiment is possible only with the assistance of an investigator (court), that is, a person (body) with authority. Therefore, in most cases, we can only talk about the participation of an expert in an investigative experiment, which is initiated by a knowledgeable person, forming its content side.

To this we can add that the positive result of the experiment indicates only the possibility of such a connection, i.e., it is probabilistic in nature. The negative result is categorical, reliable.

**D. Modeling** is the study of any objects (specific or abstract) by modelling, that is, on conditional images, diagrams or physical structures similar to the object under study, using methods of analogy and similarity theory when performing and processing experimental data.

Modeling is used in cases when it is impossible or impractical to experiment with an object, and there is a need to use an appropriate model. The most common definition of a model given by V.A. Shtoff is: “A model is understood as a system realized physically or mentally, which can by reflecting or reproducing the object of research, replace it in such a way that its study would give us new information about the object” [8]. The most important feature of any model is “its similarity to the original in one of the strictly fixed relationships” [9].

When conducting predictive studies (for example, when determining the possibility of further operation of a structure, taking into account their impact on the ecological environment), an expert can simulate building structures in order to test on models how they will work in reality. In physical modeling, the correspondence of the homogeneous quantities is established, in mathematical modeling, the quantities included in the monotype of mathematical dependencies based on analogy (for example, deformation and electric current characteristics).

Ideal models created and studied by an environmental expert deserve isolated consideration.

**E. Idealization** is based on the creation and study of ideal, mentally constructed objects. The significance of this method for environmental assessments is determined by the specifics of its objects and the nature of the tasks solved by the expert. Non-mobile objects (buildings, structures, constructions, the construction site territory) cannot be presented to the expert directly, so their study goes in two stages:

1. field study, including fixation (physical — in symbolic form and ideal — in the
mind of an expert) of the main features of objects that are relevant to the case;

2. indirect perception of an object when physical and symbolic information is converted into ideal.

Studying records, sketches, and measurement results, an expert “complements” the ideal image of the object he has studied in field with details that, together with the facts already imprinted in memory, create a system of signs that gives an idea of the properties of the object and allows solving other tasks in search of an answer to the question posed by the body (person) who appointed the assessment.

As already noted, the tasks of environmental assessments can be retrospective and prognostic, and the state of the object also at the time of the study is subject to specification within its framework, in particular. Solving issues of all kinds is connected with the need to create ideal objects.

Thus, the creation of ideal objects and their study is an obligatory element of the system of methods used in the environmental assessments’ performance, which assumes that the expert has the skills of abstract thinking, which allows him to easily “move” from the physical sphere to the ideal and vice versa in the process of research.

**F. Generalization** is a logical method of transition from a single to a general, from a less general to a more general value [10].

Thus, when conducting field studies, the expert determines the impact on the environmental safety of the quality of its separate elements used in the construction of structures, products and materials. The line of research from single elements of the building to the building as a whole involves a transition from the single to the general, from less general to more general knowledge about the object of assessment.

**H. The essence of formalization** is to replace concepts with special symbols, signs. The introduction of symbols provides a complete overview of a certain area of problems, brevity and clarity of knowledge fixation, allows to avoid ambiguity of terms. This method is used in environmental assessment when recording the results of an expert examination of research objects to indicate the location of certain violations affecting environmental safety. At the same time, the designation systems adopted in special scientific and applied disciplines or established in organizations whose activities are related to the field of operation of construction facilities are used.

The method is also used in the drafting of expert opinions. The expert should give relevant explanations in the opinion, indicate what this or that sign (symbol) means, otherwise its perception may be significantly hindered. Therefore, an expert can use this method only if it will make the results of the research clear, obvious and accessible to non-specialists, in particular to litigation participants.

The description of mathematical methods should begin with measurement.

**I. Measurement** is “the process of identifying the ratio of a measured quantity to another homogeneous quantity that is taken as a unit”, a set of actions performed using measuring instruments to find the numerical value of a quantity [6].

Measurements are carried out during the examination of objects of expertise, when performing expert studies using instrumental methods.

Basically, this method consists of a number of various techniques, that allow you to minimize subjective moments that are so significant in simple sensory contemplation, and to achieve maximum accuracy of results, as far as the nature of the objects being measured and the nature of the means used allow.

The measuring instruments used in the performance of environmental assessments are classified on various grounds. Let us consider the classifications that are most essential for judicial expert practice.

1. By the purpose:
   a) general-purpose measuring instruments and equipment (measuring linear dimensions,
measuring temperature, measuring time, laboratory utensils, heating devices, equipment for sampling and storing samples of material, etc.);

b) devices for determining the structural characteristics and basic properties of construction materials:

- physico-chemical properties — structure and chemical formula;
- physical and mechanical properties — density, porosity, water absorption, abrasion, hardness;
- rheological properties — viscosity, thixotropy;

c) devices for determining the special features of construction materials and coatings: corrosion resistance; waterproofing, heat protection, acoustic, sound insulation, X-ray shielding properties, vapor permeability, environmental safety, etc.;

d) devices for determining the main parameters of the premises microclimate: temperature, humidity and air velocity; noise and vibration; maximum permissible concentrations of liquid, gaseous substances and dust in the air of the working area; illumination, insolation of premises; ecological safety of the environment: the presence of electromagnetic and radioactive radiation.

2. By the nature of the impact on the object:

a) devices and equipment of non-destructive methods of investigation of objects of judicial construction and technical assessment (JCTA), the use of which does not destroy the suitability of the product, construction, building and structure for use and operation.

b) devices and equipment of destructive methods of research of JCTA objects, the use of which irreversibly violates the integrity and structure of the sample, the product.

3. By the research location:

a) devices used for field studies of buildings, constructions and structures, as well as land plots and soil pieces functionally related to them;

b) laboratory instruments and equipment included in the set of stationary or field laboratories.

4. By the types of studied materials of structures, products and coatings:

a) defect identification devices for metal structures;

b) defect identification devices for stone (natural and artificial) materials and products;

c) defect identification devices for materials made of wood and concrete;

d) defect identification devices for paint coatings.

Measurement methods might be direct (immediate) and indirect (mediated or mediate). In direct measurement, the studied values are compared with the measuring unit and the result is perceived directly taking into account the experimental measurement data (for example, when measuring the distance from the junction with the ground of damaged live parts of electrical equipment to the location of a person who has received an electric injury). Indirect measurements are divided into circumstantial and cumulative. Circumstantial measurements include measurements, the results of which are based on experimental data of direct measurements and include several quantities associated with the desired quantity by a certain equation.

Calculations are used when performing these actions. Of course, their use in the production of environmental assessments is not limited to this, practically no study can do without them.

Another general scientific method is closely related to measurement — geometric constructions. Drawing a plan, a diagram is a very effective way of capturing the setting of the action scene. The plan gives a clear idea of the mutual arrangement of objects, their various kinds of features studied during inspection. It must be properly designed, that is, contain all the necessary details, among them: title, scale (for a large-scale plan), legend, date, signature of the expert. The existence of a plan (scheme) should be indicated accordingly in the text of the opinion or protocol of the investigative or judicial action.
With the participation of a knowledgeable person in the investigation of an accident or casualty, the plan (diagram) should depict the situation at the scene before and after the event. If it is impossible to restore the details of the situation before the incident on the spot, it should be reconstructed according to the data of witnesses and participants of the event interrogation, with the appropriate notes being taken.

Computer software complexes are being actively introduced into expert practice. New information technologies based on their use allow for the search and automated processing of scientific, technical, regulatory and legal information necessary for the performance of environmental assessment; to perform calculations and mathematical modeling in the course of research, as well as computer modeling when choosing, for example, typical expert versions or reconstructing elements of the real situation before, at the time and after the event that became the subject of investigation or trial [11].

Special methods, in this case, are understood as methods with a scope of application limited to one or more fields of science or branches of practical activity [12].

Special methods used in the performance of environmental assessments can be classified according to several criteria.

1. By the nature of the impact on the object:
   a) non-destructive methods, the use of which does not destroy the suitability of the product, construction, building and structure for use and operation.
   Non-destructive methods include: radiation, X-ray, gamma method, acoustic, ultrasonic defect identification, ultrasonic thickness measurement, magnetic method, method of penetrating substances (capillary method, leak detection method, etc.);
   b) destructive methods, the use of which irreversibly violates the integrity and structure of the sample, the product. These include, in particular, physico-mechanical and physico-chemical methods for the study of material samples extracted from the structures of buildings and structures under construction or in operation.

2. At the place of the study:
   a) field study — used directly at the construction site under study.
   Field study methods include geodetic measurements, geometric measurements of an object under construction, etc.;
   b) laboratory — used in stationary or field laboratory conditions on samples, pieces extracted from the structures of buildings and structures being erected or operated.
   Laboratory research methods include the study of the features of samples using special stationary laboratory equipment. Physico-mechanical, chemical, physico-chemical and physical methods of studying samples of building structures are used here.
   Physical, physico-mechanical, chemical and physico-chemical methods related to this type of methods have been widely used in expert practice, aimed at the analysis of morphology (external structure), composition (elemental, molecular, phase — qualitative and quantitative), structure, physical and chemical properties of substances and materials used in the construction industry [13].

3 Conclusion

The final part of the expert ecologist’s opinion contains the brief answers to the questions posed. The conclusions reproduce the results of the study described in the previous part.

Each of the issues must receive a substantial answer or appropriate motivation for the impossibility of its solution. The conclusions about the circumstances on which the expert was not asked questions, but which were established by him in the course of the study as an expert initiative, is set out at the end of this part of the opinion.
If there are appendices (tables, drawings, diagrams, etc.), they, as well as the opinion itself, are signed by an expert (experts), since appendices are illustrations to the text of the opinion, its component part. The expert’s signature should top the full text of the opinion (in practice, often a list of appendices, a postscript, etc. follows after the signature). The opinion itself is approved by the expert page by page.

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