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EVOLUTION OF COGNITIVE ACTIVITIES MEANS IN THE CRIMINAL PROCEDURAL CODE OF UKRAINE

Лук'янчиков Є., Лук'янчикова В. ЕВОЛЮЦІЯ ЗАСОБІВ ПІЗНАВАЛЬНОЇ ДІЯЛЬНОСТІ В КПК УКРАЇНИ. Досліджено процес розвитку засобів пізнавальної діяльності з розслідування злочинів починаючи з їх закріплення у Зводі законів Російської імперії 1857 року. Аналізуються думки науковців щодо визначення специфічних ознак, за якими слідчі дії виділяються з широкого кола процесуальних. Звернено увагу на поступове проникнення прийомів і методів оперативно-розшукової діяльності, спрямованих на негласне отримання інформації у кримінальне провадження.

Ключові слова: злочин, засоби пізнавальної діяльності, слідчі (розшукові) дії, процесуальні дії, пошук, розшук, розшукова діяльність.

Formulation of the problem. A feature of modern crime is that it is characterized not only by quantitative, but also more qualitative changes. New types of crimes are spreading (in the field of high technology, thefts in the budget and financial and credit spheres), mercenary-violent crime is increasing, the actions of criminals are becoming more violent and cowardly, professionalism, organization and corrupt crime increase. Against this backdrop, in various circumstances, the activity of law-abiding citizens decreases in providing law enforcement authorities with information on crimes and the person who committed them, which became known to them. The consequence of this is the restriction of the information capabilities of law enforcement agencies in timely detection of crimes, establishing all its circumstances and those involved in it. The significant increase in the burden on law enforcement agencies and the increase in the number of crimes that remain undisclosed is an objective precondition for further research, development and application of new cognitive tools and methods of work with sources of information about the circumstances of the crimes that are being investigated by the investigator.

State of research. The works of such domestic and foreign scholars as V.P. Bakhin, R.S. Belkin, A.F. Volobuyev, V. I. Galagan, V.G. Goncharenko, A. are devoted to the study of means of cognitive activity on disclosure and investigation of crimes. Yu. Dubinsky, V.A. Zhuravel, O. N. Kolesnichenko, V. O. Konovalova, A. M. Larin, I. M. Luzgin, V. G. Lukashevich, M. A. Pogoretsky, D. B. Sergeyeva, V. Tishchenko, K. O. Chaplinsky, S. A. Shafer, V. Yu. Shepitko, M. Ye. Shumilo and others.

A quick, complete and unbiased investigation of crimes is the task of criminal proceedings (Article 2 of the CPC) and is ensured by the optimal use of cognitive tools for criminal-procedural activities - investigative (search) actions, requiring their in-depth investigation under updated criminal procedural legislation.

The **purpose** of the article is to find out the essence of investigative (search) actions, the definition of approaches to their name, the study of the process of their formation and regulatory consolidation at various stages of the formation of legislation governing legal relations in the field of criminal proceedings.

Presenting main material. The gradual movement of Ukraine in the direction of European integration necessitates the updating of legislation. That is why during the development of

a new CPC Ukraine an attempt was made to consolidate the norms that would ensure the rights and freedoms of a person suspected of committing a crime. On the other hand, the other party - the victim, that is, the person who has suffered harm from the crime and needs renewal of his rights and legitimate interests, has not been left without attention. Given the current nature of crime, the need for timely detection of crimes that are being prepared and investigations already committed, the legislator significantly expanded the means of cognitive activity. The current CPC of Ukraine includes Chapter 21, the rules of which regulate the use of new means of cognitive activity - conducting secret investigative (search) actions. In addition, corrections have been made to regulate the technology of certain traditional investigative actions.

Assessing the changes that took place in the criminal procedural legislation of Ukraine with the adoption of the new CPC, A. Solodkov notes, it is safe to state that it has been implemented European standards in the field of human rights ... which have proved their effectiveness in many years in European countries [18, p. 55-56]. To some extent, this applies to the Institute of Investigative (Investigative) Actions, which retained the main means of obtaining information on the circumstances of the crime in the criminal proceedings and the introduction of a new institute of means of cognitive activity of the investigation - secret (investigative) investigations.

Investigative actions - one of the fortified institutes of the criminal process. The origins of their normative consolidation and settlement are contained in the Code of Laws of the Russian Empire in 1857 (Articles 21, 197, 356, 360, 376, 377, etc.), the Statute of the Criminal Procedure in 1864 (Articles 250-258, 292, 294, 468, 1158 et al.), in which it is directly referred to the general provisions of conducting investigative actions. A number of other rules are devoted to questioning, face-to-face rates, reviews, surveys, searches, and more. An analysis of their content suggests that all of them are aimed at finding sources of crime information, their research and obtaining the necessary information. That is, they all have search, cognitive orientation. So, in Art. 254 of the Statute of Criminal Proceedings is referred to in the following context: "when conducting an inquiry, the police collect all the information it needs through searches, verbal inquiries and silent observation" (highlighted by us). The search relied on the police, but its essence was not disclosed, a list of actions that were to be covered by this notion was not given. It should also be noted that none of the previous normative acts, in addition to the name (investigative actions), did not specify the definition of such actions, which contributed to the formation of different views among scholars on their essence and attribution of those or other procedural actions to investigators.

Thus, O. M. Larin correctly defined the investigative action as a way to implement the rules of criminal procedural law [10, p. 170], attributed to them all procedural actions, even those that were associated with the adoption of applications and reports of crimes [9, p. 59]. This opinion is shared by I. M. Luzgin and refers to the investigative actions of those whose content is: "... mainly the discovery, investigation and evaluation of evidence" and "... management of the prose-SOM investigation, determination of its limits, terms and procedure of proceedings" [11, p. 96]. This definition includes all criminal procedural activities related to the search for sources of information and obtaining the necessary information, as well as the making of procedural decisions.

Other scholars try to identify the specific features of the actions proposed to be attributed to investigators and consider them as a criminal procedure provided for by a combination of operations and methods that are provided by state coercion and that are used in the investigation of crimes to detect, fix and verify factual data, which are relevant for evidence in a criminal case [16, p. 5]. Turning to this question S. A. Shayfer states that each investigative action can be represented as a specific set of cognitive techniques for the detection and display of information of a definite species [21, p. 44].

There are also occasions when in the views of scientists on investigative actions there are no consistency. Thus, formulating the definition of investigative actions, M.I. Bazhanov emphasized that they were being conducted during the investigation in order to collect and secure evidence. However, the list of such actions included the prosecution of a person as a prosecutor, the selection of a preventive measure, the recognition of a person victim, civil plaintiff and civil defendant, etc., which did not have a search engine, cognitive orientation. Rather, they resembled procedural decisions and measures to ensure criminal proceedings [17, p. 202-203]. A certain influence on the formation of such an approach to the attribution of a wide range of procedural actions to the list of investigators was made by the editors of certain norms of the CPC of the Ukrainian SSR in 1922. In Article 111, the legislator listed a list of

investigative actions pro-management which for the investigator was mandatory in the event of recognition of the received materials of inquiry are sufficiently complete: a) the presentation of the charge; b) interrogating the accused; c) drawing up the indictment.

As a result of lengthy discussions, scholars formulated the definition of investigative actions. Under them, it is proposed to understand the actions foreseen by the criminal procedure law aimed at obtaining (seeking, assembling), or verification of evidence already obtained in a particular criminal proceeding. They are a kind (part) of the broader content of the notion of procedural actions carried out by an authorized person at the stage of pre-trial investigation in accordance with established procedural requirements, have a cognitive orientation, that is, always aimed at obtaining, fixing or verifying evidence [8, p. 365]. Such a definition of investigative actions is formulated by A. Ya. Dubinsky, but instead of a generalized subject that they can carry out (full-time person), he lists their list - the investigator or the person conducting the inquiry (and in cases determined by law - the prosecutor and the head investigator unit) [5, p. 215].

All other actions of the investigator in the criminal proceedings are rightly emphasized by M. A. Pogoretsky, although they are procedural as they are carried out by the authorized process subject in a definite CPC of Ukraine in a procedural form and aimed at reaching the goal of solving the problems of criminal proceedings, but they do not matter investigative (search) actions [12, p. 49].

A comprehensive study of the concept and essence of investigative actions was carried out by SA Shafer. Based on the analysis of certain norms of the CPC, he concludes that the term investigative actions is given differently in terms of comprehension - more or less in content. In some cases, the legislator associates this term with the subject of procedural activities and understands any procedurally significant acts of the investigator under investigative actions. In others, it focuses on the cognitive aspect and to investigators include actions that serve as methods for investigating the circumstances of a crime and establishing truth [20, p. 3].

To name one or other actions by the investigators only because they can be conducted by an investigator, we consider it not sufficiently substantiated. In conducting criminal proceedings, the investigator applies a wide range of actions stipulated by the CPC of Ukraine and differ in purpose and cognitive capabilities (measures to ensure criminal proceedings, notification of suspicion, suspension of pre-trial investigation, etc.). The difference between investigative actions from other procedural actions should be determined not by the subject of their conduct, but by the functional, essential characteristic - the search-cognitive character, the direction of obtaining new factual data and verification of those available. Suffice it is noted by MA Pogoretsky that the attribution of actions to the investigators by the subject of the conduct does not reflect their essence and gives grounds for the same actions, if proceeding from the subjects of holding, considered prosecutor's, judicial or those carried out operational divisions [13, p. 178]. There is a logical question, says D. B. Sergeyev, the terminological designation of these investigative (search) actions conducted by the prosecutor (in accordance with clause 4 of Part 2 of Article 36 of the Criminal Code of Ukraine), the head of the pre-trial investigation body (paragraph 6 part 2 of the article) 39 of the CPC of Ukraine) in a court session or at the initiative of the party of defense [15, p. 181-182].

In the future, when operating concepts, investigators (search) actions will come from their search and cognitive character and the focus on obtaining new factual data and checking the available.

When analyzing the concept of investigative (search) actions, it should be noted that such a definition is a novel of the current CPC of Ukraine. For a long time, legislation, theory and practice used the concept of investigative actions, conducted relevant research to determine its content and essence. Differences in the concept of investigators (wanted) actions from the previous "investigative action" legislator, as usual, does not lead. Scientists remain ungrateful, try to guess the thoughts of the legislator, and justify why the traditional investigative actions have gained the names of the wanted people.

These actions, according to D. S. Sergeyev, are of an informative character and an aspirational nature, the essence of which is the attempt of the procedural person to find and properly record in the relevant procedural sources the actual data relevant for the criminal proceedings. It is this aspect of the aforementioned activity that has intensified, in its opinion, the legislator has introduced into the CPC of Ukraine a slightly modified term for the indication of these actions - "investigative (search) actions" [15, p. 183].

We have made an attempt to find the origins for introducing this concept to the CPC of

Ukraine. For this purpose, the criminal procedure legislation of individual countries (Georgia, the Republic of Estonia, the Kyrgyz Republic, Moldova, the Republic of Belorussia, the Russian Federation, the Federal Republic of Germany) was investigated. In the CPC of Moldova, in section IV, the evidence and means of proof do not contain the word "investigative actions", but the means and methods of proof. In the CPC of Germany, actions aimed at obtaining information in some places are called means (§ 100a, 100s, 100i, etc.), and in other investigative actions (§§ 162, 165, 168, etc.). The remaining procedural codes refer to investigative actions, but none of them refers to "wanted", despite the fact that they can all be used to find objects, documents, and information known to the investigator and unknown to a certain time. In this case, the question arises, and what the developers of the current CPC of Ukraine did not satisfy the traditional definition of such actions as investigators without the additional word "search".

Investigating the means of information and cognitive activity, O. N. Kolesnichenko for the first time in the theory of criminology emphasizes that the investigator may instruct the inquiry authorities to conduct "separate investigative investigations" [7, p. 352]. Thus, in the scientific revolution more than half a century ago a new phrase "investigative investigatory actions" appears. Unfortunately, the author did not reveal the essence of this notion, the difference between these actions from other "investigative actions", the possibility of such actions not only the body of inquiry (at that time), but also the investigator himself. Interestingly, the so-called investigatory actions were taken by the developers of the new CPC of Ukraine, chapter 20 of which is called "Investigative (wanted) actions". In Article 3 of this Code, "Definition of the main terms of the Code", as in the previous CPC, the definition of investigative actions is not given. However, in Art. 223 states that investigative actions are actions aimed at obtaining (collecting) evidence or verifying evidence already obtained in a particular criminal proceeding. The definition emphasizes precisely the procedural and cognitive nature of the procedural actions, according to which they relate to investigative (search) actions.

It should be noted that in the theory of forensics there is a distinction between investigative and investigative activities. R. S. Belkin sees it in the fact that the purpose of search activity is to establish and identify a crime and a criminal, and the purpose of the investigation is to prove the fact of committing a crime and blaming the perpetrator. One of the elements of the investigative activity of the investigator, he calls investigative actions, and emphasizes that they are carried out relatively well-known, established objects [1, p. 192-193]. The first investigation of the search should be considered by VI Popov [14]. In the future, the investigator's investigative work problems were reflected in the studies of O. Zakatov [6].

The study of the opinions of scholars on the attribution of those or other actions to the wanted persons is evidenced by the absence of this unity and the wide variety that needs special investigation. We will focus on one of the groups of such actions - investigative actions. These actions, as noted by R. S. Belkin, are carried out only in respect of known, established objects. In such a form, the interpretation of the search is also given in the dictionaries where it is understood as a system of investigative actions and operational measures to identify the disappeared perpetrator, the stolen property, etc. [2, p. 1084] That is, it's about the famous objects that need to be found. At the same time, investigative actions can be carried out to find objects that are not yet known to the investigator. This can occur during the review of the place of the event and other investigative actions, which corresponds more to the notion of no search, and search [2, p. 915].

If investigatory actions can be used to find both known and unknown objects, is it appropriate to add the word "wanted" to them, is it possible to return to the time-tested phrase for their designation "investigative actions". We ask the opponents not to blame us for nostalgia for the Soviet past. The name "investigative action" appeared in jurisprudence much earlier than the Soviet era, it was perceived as traditional to refer to this type of activity and was used for a long time by science and practice.

Analyzing the cognitive tool for investigating crimes, it is impossible to deny that the current CPC of Ukraine, on the one hand, significantly expands the means of obtaining information by the investigator, and, on the other hand, gives him the right to use cognitive techniques that are inherent in operational units, in their essence they are reminiscent of operational-search activities, which were called investigative (search) actions. On this basis, some scholars believe that there was a partial merger of criminal-procedural and operational-search laws [19, p. 107]. Instead M.E.Shumylo points out the partial unification of non-legislation, and the police (operational search) and procedural activities, which provides for the verification of primary data on a possible crime in the field of criminal proceedings under the control of a criminal procedural law with

observance of its forms and guarantees [23, p. 228-229].

At one time, A. Ya. Doubinsky drew attention to the fact that the merging of these two functions (activities) is unacceptable, since it may adversely affect the assessment of evidence, the objectivity of the investigation, the formation of conclusions in criminal proceedings [4, p. 89]. In the scientific and educational literature of the Soviet period, noted M. E. Shumily, the generally accepted position was that the operational-search and criminal-procedural activities confused dangerous [22, p. 24-29].

At the same time, it is difficult to find work devoted to the disclosure of crimes, which did not provide recommendations for the organization of interaction between investigators and operational units of law enforcement. They touched upon the order of exchange of information, first of all collected by the use of operational-search activities at various stages of pre-trial proceedings. Evidence can serve as a scientific and practical manual of G. M. Gapotchenko, issued in 2012 and devoted to the peculiarities of criminal proceedings against the materials of operative and investigative activities [3].

A similar attitude to the possibility and forms of use of information obtained by the use of operational-search activities to a certain extent can be considered justified. At that time, the defense side was significantly limited in collecting and submitting information in favor of its client.

At present, the possibilities for protection have changed and are substantially expanded in identifying and filing sources of information to the court in favor of the defendant. In addition, it should be noted that the independence of the investigator in the adoption of procedural decisions and the conduct of investigative actions is significantly limited. Not so far, when no decision will be taken by the investigator personally without the consent of the head of the investigating unit, the prosecutor or the court. The question arises as to the danger that can be posed in connection with the expansion of the tools of cognitive activity of the investigator, which will be under sophisticated prosecutorial supervision and judicial control.

Conclusions The search for modern effective means of obtaining information for the disclosure of crimes in order to bring the perpetrators to justice and resuming the violated rights of the victims will continue. Already, the CCP has been supplemented by Art. 269-1 "Monitoring bank accounts", proposals were made to supplement chapter 16 of the CPC with the paragraph "Measures to ensure criminal proceedings in the field of information technology". Proposals of scientists on improving the information provision of criminal proceedings are aimed at balancing the parties' ability to achieve the truth. The investigator can not remain in a worse condition than the protection side, in providing means for identifying sources of information and filing for court consideration. If the defense party can use any means to identify sources of information other than criminal ones, then the investigator may apply only those provisions stipulated by law in the manner prescribed by him (observance of the procedural form).

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Summary

It is studied the origins of the investigative activities mentioned in the Russian Empire Code of Laws in 1857. The study of these activities content shows that its goal is to search of the information about the crime, the research and the necessary information acquisition. It is analyzed the scientists opinions about the definition of specific internals and characteristics allowing to mark the investigative activities between the other procedural acts. The author has a shot to analyze the practicability to use the modified term "operational (search) activities" in the Criminal Procedure Code and shows the not full accordance to the cognitive aspects of these activities. It is notified that there isn't a term "operational (search) activities" in any Criminal Procedure Codes studied by the author and it is supposed to use a term "investigative activities" in the legislation, the theory and the practice. It is drawn attention to the application of the procedures and methods of the operational search activities directed on the surreptitious obtaining of information for the criminal proceeding to have the information about the investigation of the heavy and especially grave crimes committed by the secret and disguised ways usually organized by the criminal groups with corrupted contacts.

Keywords: *the crime, the cognitive activity means, the operational (search) activities, the procedural acts, the search, the detection, the investigative actions.*