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Peculiarities of evidence in criminal investigation and judicial proceedings in the republic of Uzbekistan based on foreign experience

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Abstract: This article examines the types of operational investigative activities, the implementation of operational investigative activities and the main tasks of operational investigative activities and measures to ensure the legality of the results of activities, the legality of evidence collected during operational investigative activities, and provides scientific, theoretical and practical recommendations on the basics using this evidence as the main means in the investigation of crimes, as well as in proving guilt at a court hearing. At the same time, the opinions and reasoning of theoretical scientists and experienced employees were analyzed.

Keywords: Operational investigative activity, type of event, operational experiment, prosecutorial supervision.

Introduction: Operational-search activity has been cooperating with the fair judicial-investigative system for over two centuries. Its tasks have always included detecting crimes, uncovering them, and identifying and locating suspects who are to be handed over to judicial-investigative authorities—and it continues to perform these functions today. Attitudes and approaches toward operational-search activity may vary. However, its necessity cannot be denied on any grounds. For this reason, such activity has always continued to evolve and is still developing today, existing in all countries as one of the main tools in the fight against crime, never losing its relevance across all periods.

Conducting operational-search measures refers to the process of implementing a set of operational and other measures aimed at preventing or solving crimes committed or being committed by persons reasonably suspected of a crime, as well as identifying and capturing fugitives from justice—particularly in cases where achieving these goals by other means is impossible or extremely difficult.

Given the tasks of combating crime, there must be sufficient reasons and grounds for making a decision to conduct operational-search measures.

Using information obtained in criminal cases as evidence contradicts the essence of judicial-investigative procedures, their procedural form, and the principle of applying only legally prescribed procedural means of proof. According to German criminal procedure law, it is concluded that it is inadmissible to use operational data obtained during criminal proceedings as evidence, or to convert such information into court evidence by questioning the officials conducting the operational-search activities or individuals involved in the case. [1]

According to the experiences of many foreign countries, non-traditional methods that are beyond the scope of court-investigative authorities are also used to detect, uncover, and prove crimes. These include interrogation under psychological pressure, use of polygraphs (lie detectors), extrasensory perception, and biorhythmology. However, such methods cannot serve as a scientifically or ethically grounded basis for proving a criminal case during the judicial-investigative stage.

Only reliable and traceable information within the scope of a criminal case can be relevant to the subject of proof. The relevance of evidence means that it pertains to the criminal case, complies with the requirements for evaluating evidence, and is significant for the lawful resolution of the case. [2]

When analyzing foreign practices, we find that Swiss legislation outlines ten key characteristics for using

evidence gathered from operational-search activities as primary means of proof, namely:

- Rules on proof are part of the subject of criminal law;
- Only authorized state bodies are recognized as subjects of proof;
- The burden of proof is placed solely on the prosecuting party;
- There is no limit to the quantity of evidence;
- All evidence is evaluated freely without any exceptions;
- If admissible evidence is obtained in an inadmissible manner, it is also considered inadmissible;
- The theory of asymmetry is not recognized, meaning equal standards apply to both prosecution and defense evidence;
- The verification of evidence is not viewed as an independent element of the proof process;
- Admissibility requirements apply to all evidence;
- Proof consists of two distinct elements: the collection and evaluation of evidence. [3]

These cases show that in the nature and essence of evidence, important factors such as the reliability, admissibility or inadmissibility of the evidence, the unlimited scope of relevant evidence, and the requirements imposed on such evidence play a significant role.

At the same time, many foreign countries have introduced the assessment of evidence obtained or collected during the process of crime detection, exposure, and proving as a fundamental principle in their legislation. For example, in the criminal procedure legislation of Germany, the principle of evaluating and proving evidence based on the judge's internal conviction is recognized, which is reflected in the following:

- In evaluating evidence and proving the criminal nature of an act, the judge's personal conviction regarding the guilt of the accused plays a decisive role and is considered sufficient for delivering a verdict;
- If the judge has reasonable doubt about whether the accused committed a crime deserving punishment, the verdict must be acquittal (in dubio pro reo);
- There are formal limits to the judge's internal conviction when evaluating evidence—meaning the judge's arguments must be clear, logically sequenced, and free from contradictions. The judge must act on generally accepted and scientifically proven rules formed from experience;
- When evaluating evidence, the court is obliged to thoroughly and comprehensively examine all available evidence;
- Evidence prohibited for use by the court must not be considered in delivering a verdict or used as proof.

In the criminal procedure legislation of the Russian Federation as well, the subject responsible for proving the case evaluates evidence obtained as a result of operational-search activities based on internal conviction, law, and conscience. [4]

In foreign countries such as the United States, the United Kingdom, Poland, and Germany, even lawyers, in cases where a crime has been uncovered or solved through operational-search activities, may conduct independent investigations to collect evidence aimed at protecting the rights and interests of the accused. In Germany, in fact, lawyers have the right to independently investigate case circumstances and conduct parallel investigations alongside officials responsible for the criminal proceedings. [5]

In addition, under the legislation of the United States and Slovenia, in order to carry out a search as part of operational-search or investigative actions, a request known as an "affidavit" must be submitted to the court. The judge, before granting permission for the search, must consider not only the grounds and suspicions requiring the search, but also the following:

- The experience and work background of the operational officer or investigator conducting the action, especially regarding their expertise in solving crimes;
- The justification and reasonableness of the grounds or suspicions for conducting the search;
- Before giving consent for the action, the judge must receive the sworn oath from the operational officer or investigator stating they have been warned about liability for perjury;
- The judge does not need to issue a separate court document to approve the search; it is sufficient to confirm the request for permission with their signature;
- In the procedural processes related to the conduct of the search as an operational or investigative action, the judge who authorized the sanction may also directly participate in the process;
- In urgent cases, the authorities conducting operational-search or investigative actions may call the judge, explain the situation in detail, and receive the sanction by phone. The decision must then be

formalized in writing and submitted to the court within twenty-four hours for approval. [6]

In our view, the provision in Article 67 of Ukraine's Criminal Procedure Code stating that "The subject of proof is the totality of circumstances that must be proven in each criminal case," as well as the wording in Part 1 of Article 81 of the Criminal Procedure Code of the Republic of Uzbekistan, which states "Whether a socially dangerous act was committed or not, and whether the person who committed the act is guilty or not," demonstrate that these formulations are not fully capable of reflecting all the circumstances that need to be proven in each criminal case.

Therefore, it is advisable to amend Part 1 of Article 81 of the current Criminal Procedure Code to read as follows:

"Any information that forms the basis for the inquirer, investigator, prosecutor, and court to determine, in accordance with the procedure established by this Code, the presence or absence of circumstances included in the subject of proof in a criminal case, as well as other circumstances important for the correct resolution of the case, shall be considered evidence."

In addition, in order to establish an effective mechanism for detecting crimes committed using electronic (digital) devices during criminal proceedings and to enhance the efficiency of the subject evaluating the evidence, it is important to develop guidelines for the collection, procedural documentation, and use of digital (electronic) evidence, as well as for the acquisition and expert examination of such evidence with the involvement of specialists.

This is particularly important when we look at the experience of developed countries such as Japan, South Korea, and Singapore. In these countries, the procedural processes related to conducting online searches, operational-search activities, or investigative actions have been implemented for several years and have demonstrated positive results in court and investigative practices. Therefore, such evidence collection methods have proven to be effective and significant.

As seen above, based on the legislation and operational-search practices of foreign countries, there are specific practical foundations in court and investigative activities for evaluating items and documents obtained, discovered, or collected during operational measures as evidence in solving and uncovering crimes. These also serve to prove the criminal nature of an act or the existence of circumstances that exclude criminal liability. Accordingly, improving operational activity aimed at uncovering various types of crimes—whether covert or open—based on international experience is essential.

One of the most important factors in proving a crime during the court-investigative phase is ensuring the completeness of the body of evidence. This is achieved through methods such as identifying and verifying initial information about the signs of the crime during operational-search activities, collecting comparative samples, and confirming and documenting information about individuals involved in criminal activity. These methods ultimately ensure full confidence in the verdict of guilt against the defendant.

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