

PECULIARITIES OF CONDUCTING CERTAIN INVESTIGATIVE (SEARCH) ACTIONS DURING THE INVESTIGATION OF CRIMINAL OFFENCES RELATED TO PUBLIC FUNDING OF THE HEALTHCARE SECTOR IN A PANDEMIC SITUATION

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Annotation. *The article examines the peculiarities of conducting certain investigative (search) actions during the investigation of criminal offences related to public funding of the healthcare sector in a pandemic situation. The author highlights the most important factors that influence the conduct of a search, investigative examination, interrogation of witnesses and suspects. The author identifies both specific factors inherent only in this legal status and ordinary factors inherent in pre-trial investigation without a state of emergency.*

Based on the achievements of forensic scientists and the results of a survey of practitioners, an attempt is made to determine the list of documents in healthcare budget crimes proceedings in a pandemic situation that are subject to seizure during a search, as well as the specifics of their examination. The author focuses on tactical situations and combinations during the interrogation of a suspect. It is noted that there exist conflicts in the legislation that allow the suspect and the witnesses to recant their testimony without legal grounds. The article deals with the issue of maintaining a sanitary regime during the procedural actions and its impact on the preservation of trace information on objects, documents, medical equipment, etc.

International recommendations on the specifics of certain procedural actions during the quarantine regime were taken into account. All the achievements are confirmed by the results of statistical data and interviews with practitioners, as well as by the analysis of criminal proceedings in the mentioned category of offences.

Key words: *investigative (search) actions, interrogation, search, investigative examination, budgetary sphere, pre-trial investigation, healthcare, pandemic.*

1. Introduction.

The unpredictability of the modern world makes law enforcement agencies use the experience gained during martial law, terrorist attacks, man-made accidents, ecocide, including emergencies such as epidemics, pandemics and so on in a timely manner. The end of the third wave of coronavirus disease and the cancellation of the Pandemic [1], unfortunately, do not guarantee that states of emergency will no longer affect crime and impede pre-trial investigations. Special legal regimes somewhat change the procedures for conducting investigative (search) actions, which should be taken into account to ensure their legality and public safety.

As it is stated in the recent Statement of the European Commission on the Efficiency of Justice (CEPEJ), the key standards underpinning the functioning of the courts should continue to be applied even in the emergency situations [2].

2. Analysis of scientific publications.

The scientific basis for the study of forensic characteristics is made thanks to the works of such outstanding scientists as K.V. Antonov, V.P. Bakhin, A.F. Volobuev, V.G. Honcharenko, G.I. Gramovych, V.A. Zhuravel, A.V. Ishchenko, N.I. Klymenko, V.O. Konovalova, V.K. Lysychenko, V.V. Lysenko, G.A. Matusovskyi, M.V. Saltevsykyi, and M.Ya. Segai, L.P. Skalozub, P.V. Tsymbal, V.Yu. Shepitko, M.H. Shcherbakovsky and others. However, scientific developments should be updated on time to meet the needs of forensic practice. In the most recent works, investigative (search) actions on these criminal offences haven't been fully covered (only some of them have been considered, such as interrogation, or have been considered through the prism of the use of special knowledge). Therefore, this subject matter requires additional research.

3. The aim of the work.

The purpose of the article is to study the peculiarities of interrogation, search, and investigative examination during the investigation of criminal offences related to public healthcare financing in a pandemic situation.

4. Review and discussion.

Documents are a source of evidence in the case of any economic crime, including budget crimes in the healthcare sector during the pandemic situation. Scientific sources and the practice of investigating budget crimes show that documents are the main subject of such procedural actions as interrogation of a suspect, interrogation of witnesses, inspection of things and documents, search, temporary access to things and documents, etc.

Examination of documents in proceedings on budgetary crimes is carried out to solve the following tasks:

- a) familiarisation with the nature and specifics of the financial, economic, and rule-making activities of the institution; the procedure for accounting, preparation and submission of financial statements; specifics of record keeping; the state of financial and official discipline; specifics of internal and external control over relevant operations, etc;
- b) establishing the circumstances that are part of the subject matter of proof or are of material importance;
- c) preparing for a separate investigative (search) action (temporary seizure of documents, interrogation, inspection, etc.) [3, p. 134].

While investigating such crimes, V. Bidniak considers it appropriate to conditionally divide them into two groups: 1) those committed by a healthcare facility and 2) those committed by a provider or contractor. In each case, these may be different documents: contracts, additional agreements, specifications, design and estimate documentation (resource lists, project, estimate), financial obligation, acts of acceptance and transfer of completed works, acts of equipment commissioning, waybills, invoices, payment orders, manager's estimate, procurement plan, etc. [4; 12]. One can also add drafts, procedure logs, death logs, logs of referrals for sanatorium treatment, vouchers for treatment, a variety of accounting notebooks, expense invoices, consignment notes, etc. The practice of investigating such offences in recent years has proved the fact that a significant percentage of offences deal with covert documentation (certificates, references). We have identified two groups of falsified medical documents that can complement this list. In particular, these are genuine forms in which false data was entered, that is, intellectual forgery, and completely falsified documents that were made using software and printed using colour printers. Therefore, in addition to the documents, copying and reproduction equipment, photopolymer seals, and other equipment may be the subject of inspection or search [5]. Attention should also be paid to system units, servers, laptops, flash drives, mobile phones, keeping in mind the fact that today's document flow is also conducted in the electronic form. Forensic experts researched the peculiarities of inspection and seizure of the above mentioned items in their works [3; 6; 7; 8], so we will not dwell on them further on.

Instead we think it is more important to consider the results of the study of criminal cases and proceedings that showed that the objects of search are documents – 100%, drafts – 82%, funds obtained by criminal means – 78%, medical equipment (X-ray equipment, magnetic resonance imaging devices, ultrasound diagnostic devices, artificial lung ventilation devices, laboratory equipment, etc, etc.) – 15%, medicines – 18%, medical products (blood transfusion systems, syringes, gloves, respiratory protection, dressings, disinfectants, etc.) – 16%, computer equipment – 80%, mobile phones – 76%, construction materials – 23%, food – 17%, other – 9% [8, p. 93].

At the beginning of the pandemic, not only in Ukraine but also in other countries, the issue of a special legal regime for conducting searches and other investigative (search) actions arose first and foremost. The international community, including the Legal High School Discussions Hub, tried to resolve the issues of conducting searches under quarantine, ensuring sanitary safety during searches and contacts with law enforcement agencies, identifying persons involved in the search, etc. Although the conditions for conducting investigative actions remained the same, that is, no changes were made to the Criminal Procedure Code of Ukraine in relation to the pandemic, law enforcement officers began to use alternative tools for conducting investigative (search) actions much more widely. Namely, the possibility of conducting investigative actions remotely, as well as the option of considering issues within the competence of investigating judges in video mode, to the extent that it is correct. It all depends on the participants in a particular case and the court [9].

However, after Russia's full-scale military invasion of Ukraine, martial law was introduced, which inevitably led to a special procedure for certain procedural actions. As of today, in accordance with paragraph 3 of part 1 of Article 615 of the Criminal Procedure Code of Ukraine, when conducting a search or inspection of a person's home or other property, or searching a person, if the involvement of witnesses is objectively impossible or involves a potential danger to their life or health, the relevant investigative (search) actions are carried out without the involvement of witnesses. In this case, the course and results of the search or inspection of a person's home or other property, or a search of a person shall be recorded by available technical means by continuous video recording [14].

To ensure the objectivity in our research, we tried to take into account the opinion of not only the prosecution, but also the defence. Thus, during the searches during the Pandemic, lawyers emphasised the conflicts in the legislation when deciding whether to grant the permission to conduct a search at the place of work of the employees. Since the vast majority of people work remotely during quarantine, that is where the workplace is. It means that a pre-trial investigation body may indicate that items and documents relevant to criminal proceedings are located in the household of a particular person. The current legislation does not contain any rules that would clearly distinguish between the procedure for conducting a search in a home and separately in other property [10]. However, the articles of the CPC of Ukraine clearly regulate the procedure for the execution of this investigative (search) action. Both the search warrant and the investigating judge's ruling on permission to search a person's dwelling or other household must specify, among other information, «the person's dwelling or other property or part of the person's dwelling or other property where the search is planned; the person who owns the dwelling or other property and the person in actual possession of it; individual or generic characteristics of things, documents, other property or persons to be searched, as well as their connection with the criminal offence committed», which makes obtaining evidence of a criminal offence absolutely legal.

In particular, when investigating crimes of this category, the objects (places) of the search are office premises, including offices of managers, their deputies, employees of economic departments, warehouses and utility rooms, official and private vehicles, land plots, private premises belonging to the suspects, their close relatives or persons from the circle of close communication [4, p. 94]. Of course, every search begins with communication with the person being searched, during which it is desirable to establish psychological contact. Scientists have discussed this topic not once. The views of the representatives of pre-trial investigation bodies and the prosecutor's office differ somewhat from those of the defence due to the opposite goals, which leads to tension, a challenging psychological atmosphere, hostility, anger, irritation and counteraction. In most cases, the person tries to come up with any reason not to hand over the search items voluntarily. For example, by referring to the scale of the medical institution and the impossibility of covering the entire volume of documents.

Scientists point out that the effectiveness of an investigator's activities related to the search and detection of objects is largely determined by the knowledge of the searcher's behavioural strategy and the use of psychological techniques, taking into account the person's education, cultural level, profession, intellectual abilities, which is of great importance for finding, choosing a place and method of hiding (cache) [11] Practical staff still try to anticipate the actions of the defendants and give priority to providing temporary access to things and documents. In this way, the defendant cannot plead «ignorance» of the entire volume of documents and, what is no less important, a conflict situation can be avoided. We have not thoroughly considered this method of ensuring criminal proceedings in the given article, as it goes beyond the scope of the study, but we will definitely pay attention to it in other works. Most of the time, after a search, it is necessary to inspect things and documents, and the investigator draws up a separate report.

Preparation for the investigative review of the documents in proceedings on budget crimes should include the following measures: distribution of documents according to the possible procedural form of their use as evidence; familiarisation, if necessary, with issues related to the procedure for processing documents, ways to detect forgery; preparation of technical means necessary to detect various types of forgery in documents; selection and invitation of the persons whose participation is necessary during the review [3, p. 135].

During the direct inspection of things and documents, in addition to indicating their full name, serial numbers, and details, you should record the information that is important for proof. For example, the presence of empty lines with assigned serial numbers and dates of protocols in the logbooks, etc. Building structures, specific medical equipment, medical devices and other objects that may be the evidence in criminal proceedings may also be subject to inspection.

Ensuring sanitary safety during searches and investigative examinations by law enforcement agencies has also been the subject of discussion at international forums. But in Ukraine, this issue was quickly resolved, as all employees undergo mandatory medical examinations and vaccinations. The use of personal protective equipment in this case contributes to the preservation of forensically relevant information, such as papillary patterns on objects, fatty substances, biological traces, etc.

It is difficult to overestimate the role of interrogation in the investigation of criminal offences. Interrogation tactics can vary.

Criminalists identify the main conflict situations of interrogation that are typical in the process of investigating crimes related to violations of budget legislation: 1) the suspect does not acknowledge their participation in the relevant transactions in the course of which the crime was committed; 2) the suspect does not deny their participation in the crime, but indicates their being unaware of the illegal nature of the actions; 3) the suspect does not deny their participation in the relevant operations, but denies the guilt in committing the crime, «shifting» it to other subordinate or higher officials; 4) the defence counsel present at the interrogation opposes the proper conduct of the investigative (search) action [3, p. 140].

During the pandemic, another situation should be highlighted when a person evades interrogation by referring to illness, which delays the procedural timeframe and counteracts the pre-trial investigation. In such cases, it is necessary to send a request to the laboratory that conducted the test, a request to the medical institution to confirm or refute the diagnosis.

The survey of practical staff revealed that the main problem during the interrogation of a suspect is the refusal to testify, referring to Article 63 of the CCU, whereby no tactical combinations proposed by scientists in the form of explaining the legislation on legal liability, demonstrating the investigator's awareness of the nuances of regulatory regulation of the budget sphere, the procedure for the disposal of budget funds; presentation of documents confirming the facts of compliance with the norms of budget legislation by the suspect, which were later violated by him; presentation of documents confirming the fact of violation of the budget legislation, etc. [3; 6; 7] have no positive results. However, when the investigator uses tactical combinations and psychological techniques, there have been cases when the suspect and the lawyer consider such actions as an abuse of power by the investigator, pressure on the suspect or witness, distortion of actual events, etc. An example is the statements of the defence, which must be attached to the criminal proceedings, complaints to the SBI and other institutions.

As it is well known, the interrogation of a witness differs from the interrogation of a suspect by warning of criminal liability for refusal to testify and for knowingly giving false testimony. But still, it is precisely because the witness works in medical institutions that he or she may believe that any testimony from criminal proceedings related to state funding of the healthcare sector may be used against him or her. Therefore, in our opinion, there is no effective mechanism to address such a counteraction.

5. Conclusions.

Summing up, it should be noted that investigative (search) actions conducted during the pandemic situation have certain peculiarities. The specific factors inherent only to this legal status should be highlighted, such as refusal to testify on the grounds of illness, as well as the usual factors inherent in pre-trial investigations without emergencies. Among them, attention should be focused on the refusal to testify without legal grounds, using the conflicts in legislation. As for investigative (search) actions related to the extraction of information from material sources, such as search and inspection, in our opinion, the use of protective equipment to maintain the sanitary regime helps to preserve trace information on objects, documents, medical equipment, etc.

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