

FEATURES OF CONDUCTING SOME INVESTIGATIVE ACTIONS IN A FRAUD INVESTIGATION IN CONDITIONS OF EXTRAORDINARY LEGAL REGIMES (EPIDEMICS, PANDEMICS, MARTIAL STATE)

Pavlova Natalia

DOI: <https://doi.org/10.61345/1339-7915.2023.5.10>

Annotation. The article is devoted to some aspects of conducting investigative (search) actions, in particular, interrogation, simultaneous interrogation of two or more previously interrogated persons, and presentation for identification in conditions of epidemic, pandemic and martial law in fraud proceedings.

It is noted that criminals who, adapting to the conditions of emergency legal regimes, find new ways of committing criminal offenses. Medicines, respirator masks, artificial respiration devices, household items, etc. became the subject of fraudulent operations under the conditions of the pandemic. During martial law, generators and other energy equipment, as well as things necessary for service in war zones, became the object of encroachment. The level of fraudulent activities related to embezzlement of humanitarian aid has become critical.

The author emphasizes the importance of implementing the functions of criminal justice in the conditions of special legal regimes, due to interrogation, simultaneous interrogation of two or more previously interrogated persons and presentation for identification in a remote mode.

The disadvantages of remote pre-trial investigation are emphasized, in particular, it is necessary to more clearly regulate procedural issues regarding the use of technical means, the legal status of persons and specialists who ensure the quality of communication, etc. During such proceedings, in order to avoid abuse and ambiguous interpretation by the specified participants in the process, it is necessary for the legislator to explain: "what other grounds are considered sufficient for the use of videoconferencing", "when the quality of the image and sound is adequate", "when information security regarding the conduct of a videoconference is considered complied with". Measures to ensure the stability of communication channels and technical protection of such information at the state level are very necessary.

Key words: fraud, interrogation, presentation for identification, remote mode, investigative (search) actions, pandemic, epidemic, martial law, extraordinary legal regimes.

1. Introduction.

For a long time, our country has been in conditions it has never been in before. At the end of 2019, people's lives were changed by the COVID-19 pandemic, which caused socio-economic and political upheavals. However, the level of critical disruption of the functioning of many bodies that perform the functions of the state, and a number of legal conflicts were caused by the full-scale war of the Russian Federation. These circumstances are increasingly used by criminals who, adapting to the conditions of extraordinary legal regimes, find new ways of committing criminal offenses. Fraud was not an exception.

Demand creates supply, and as a result, medicines, respirator masks, artificial respiration devices, household items, etc., became the subject of fraudulent operations during the pandemic. During

martial law, generators and other energy equipment, as well as things necessary for service in war zones, became the object of encroachment. The level of fraudulent actions related to pseudo-volunteer activities and embezzlement of humanitarian aid allocated to persons who need it under emergency legal regimes has become critical.

However, despite significant difficulties, it should be recognized that both the pre-trial investigation and the judicial process continue to function, and the competent persons fully implement their functions. Finding the possibility of conducting investigative (research) actions in conditions of special legal regimes, in particular during epidemics, pandemics and martial law, was not an exception.

2. Analysis of scientific publications.

Certain aspects of pre-trial investigation in the conditions of emergency legal regimes were highlighted in the works of O.O. Bondarenko, I.V. Glovyuk, O.M. Drozdov, T.O. Loskutov, V.V. Rogalska, G.K. Teteryatnik, T.H. Fomina and others. At the same time, the organizational and tactical features of conducting investigative (search) actions have repeatedly become the subject of research: V.K. Veselskyi, M.M. Yefimov, V.A. Zhuravlia, N.I. Klymenko, V.K. Lysychenka, E.D. Lukyanchikova, M.V. Saltevsyyi, S.M. Stakhivskyi, V.M. Pletens, V.V. Tishchenko, K.O. Chaplinskyi, V.Yu. Shepitka and others. However, it should be stated that in today's conditions, the issue of conducting some investigative (research) actions in the conditions of war, the pandemic of the coronavirus COVID-19, the epidemic of tuberculosis and other infectious diseases, etc., remains scientifically unresolved.

3. The aim of the work there is a distinction of the specifics of carrying out some investigative (search) actions, in particular, interrogation and presentation for identification in conditions of epidemic, pandemic and martial law.

4. Review and discussion.

In the conditions of the unstable epidemiological situation in Ukraine, and now the full-scale invasion of the Russian Federation on the territory of Ukraine, the issue of interrogation, including the interrogation of two or more previously interrogated persons, becomes especially urgent.

Although interrogation can be considered the most common way of obtaining evidence, at the same time, it is one of the most difficult investigative (search) actions. Its conduct requires the investigator to have a high general and professional culture, in-depth knowledge of psychology, masterful mastery of the tactics of conducting it.

We should agree with scientists that the choice of interrogation tactics depends on several factors: a) the interrogation situation; b) the procedural position of the interrogated person and the level of his interest in the results of the investigation; c) characteristics of the interrogated person (age, character, level of legal awareness, presence of criminal experience, etc.); d) the nature of the information and evidence that the investigation has, etc [1, c. 60].

On the other hand, conducting an interrogation in conditions of extraordinary legal regimes (epidemic, pandemic, martial law, etc.) requires, in addition to the application of general criminalistic rules, also compliance with the safety of the participants who will take part in the interrogation.

In this regard, V. G. Drozd rightly points out that police officers, as representatives of state power, are responsible to the population for their activities and must not only ensure their safety from illegal encroachments, but also take measures to minimize the risks of infection with socially dangerous diseases. In particular, the coronavirus disease COVID-19 and tuberculosis, the incidence and mortality rates of which in Ukraine and the world have recently been on the rise. When making a decision on the necessity and expediency of conducting a simultaneous interrogation with the

participation of a person suffering from the COVID-19 coronavirus or tuberculosis, or in the presence of a well-founded suspicion about the possibility of the existence of such a disease in a person, the investigator (investigator) must consider the specified issue in terms of compliance with the requirements of the Criminal Procedure Code, the possibility of conducting an investigative (search) action in accordance with forensic developments and observing the legal rights of persons suffering from tuberculosis or the coronavirus disease COVID-19, and minimizing the risks of infection of the investigator (investigator) or other participants of the simultaneous interrogation during its conduct [2, c. 155].

In this regard, the safety of the investigator and another participant in the simultaneous interrogation of two or more previously interrogated persons can only be ensured by the high-quality and comprehensive application of infection control measures, namely: quick identification of the patient and his isolation from other persons; mechanical ventilation of the room, ultraviolet irradiation, disinfection of surfaces; full nutrition, use of personal respirators, rubber seals, protective glasses. Therefore, it is inadmissible to carry out the specified investigative (search) action under such conditions, when the investigator (investigator) due to lack of time, knowledge, logistical or protective medical equipment cannot fully ensure his safety and the safety of other participants by applying the entire range of infection control measures [2, c. 156].

On the other hand, the need to conduct an interrogation (simultaneous interrogation of two or more previously interrogated persons) and presentation for identification may also arise in conditions of martial law. As the analysis of criminal proceedings related to fraud showed, in 33% of cases there are conditions that make it difficult or impossible to carry out such investigative (search) actions: due to the illness of the suspect, victim or witness; due to the temporary absence of certain participants with whom it is necessary to conduct an interrogation or presentation for identification, outside the territory of the city where the pre-trial investigation body is located; due to the existence of danger for persons with whom it is necessary to carry out the specified investigative (search) actions, etc.

In the context of this issue, it should be said that the law during the pre-trial investigation allows interrogation and identification to be conducted by video conference (Article 232 of the Criminal Procedure Code). The use of video conferencing is carried out in cases where, due to good reasons, the participant in the process is not able to arrive at the place of proceedings, if it is about ensuring the safety of persons participating in criminal proceedings, or the actions take place with the participation of a minor, a minor, as well as, if it is necessary to take measures to ensure the efficiency of pre-trial investigation and court proceedings. However, it should be recognized that the specified cases are not exhaustive, since the last point of their list is "the presence of other grounds, which are determined by the investigator, prosecutor, investigating judge to be sufficient" for the use of video conferencing.

For example, if the investigators establish the need for a simultaneous interrogation involving a person suffering from infectious tuberculosis or COVID-19, or if there is a reasonable suspicion of the possibility of the existence of such a disease in a person, and it is also logically proven that the impossibility of eliminating significant contradictions by other investigators (investigative) actions, then the way out in similar situations is to conduct it in a remote mode, namely in the video conference mode, enshrined in Article 232 of the Criminal Procedure Code of Ukraine. Because this mode of simultaneous interrogation of two or more previously interrogated persons will ensure the absence of contact between a healthy participant and a patient, which is the main source of infection with deadly diseases [2, c. 157]. In the same way, if it is necessary to conduct an interrogation or presentation for the identification of a person who, due to the war, was forced to temporarily leave the region in which a pre-trial investigation is being conducted, etc.

In addition, the Criminal Procedure Code of Ukraine significantly changed the rules for the use of testimony obtained under martial law. In accordance with Part 11 of Art. 615 of the Criminal Procedure Code of Ukraine, testimony obtained during the interrogation of a witness, a victim, including the simultaneous interrogation of two or more already interrogated persons, in criminal proceedings carried out under conditions of martial law, can be used as evidence in court only if the course and the results of such an interrogation were recorded using available technical means of video recording. Testimony obtained during the interrogation of a suspect, including the simultaneous interrogation

of two or more already interrogated persons, in criminal proceedings conducted under martial law, may be used as evidence in court only if a defense attorney participated in such interrogation, and the course and results of the interrogation were recorded using available technical means of video recording. Thus, the court was given the right to substantiate court decisions with statements given to the investigator, prosecutor, or to refer to them, even if the court did not directly perceive such statements during the court session, but subject to certain conditions [3, c. 361].

In addition to regulating the grounds for using videoconferencing, the legislator established other provisions regulating the procedure for such actions. Thus, the decision to use a video conference is made by an investigator, a prosecutor, an investigating judge, and a court. Both the parties to the criminal proceedings and other participants can initiate such a decision by petition. If the party to the proceedings or the victim objects to remote proceedings, the decision on its implementation is made only by a reasoned resolution (decision). At the same time, a decision to conduct remote proceedings in which the suspect (accused) will be present cannot be made if he objects to it. Thus, the suspect can submit both a petition for consent to participate in investigative and procedural actions, and an objection to conducting a video conference. At the same time, a video conference during the interrogation of a witness, a victim in court can be held without the consent of the suspect [4].

Analyzing the content of the articles of the Criminal Procedure Code, which regulate the procedure and grounds for conducting investigative and procedural actions in the mode of video conference, it can be seen that the legislator very superficially regulates the issue of technical support for conducting remote proceedings. In this aspect, it is worth highlighting two main problems: practical and legal.

A practical problem is the high cost of a remote investigation system. The problem of financial support for video conferencing in criminal proceedings exists, and the costs associated with the initial installation of equipment and setting up channels for video conferencing will be global in nature. This circumstance gives rise to the need to monitor the legality of tender procedures for the purchase and installation of such equipment. At the same time, the essence of the regulatory and legal problem is that the criminal procedural legislation does not define what technical means can be used to conduct, for example, remote interrogation, how the judge will identify the identity of a witness or another participant in the process who is on a considerable distance, etc [4].

Also, the legislator does not regulate procedural issues of the use of technical means that ensure the reliability and quality of communication, etc. Although the current PDA sets certain requirements for the technology used to conduct a video conference, such as "adequate image and sound quality" as well as "information security." In turn, the new CPC does not clarify these terms.

However, the analysis of the norms regulating the video conference procedure allows us to conclude that the proper quality of the image is an image that allows all participants in the process to uniquely identify a person and fix it by technical means, with the subsequent possibility of identifying the person being interrogated by the image. Adequate sound quality is sound that allows all participants in the process to clearly and intelligibly distinguish the testimony of the person being questioned and to record it by technical means, with subsequent identification of the person being questioned by his voice.

The above makes it possible to assert that the problem lies not only in the manner in which the results of the video conference will be processed, but also in the reliability of the technical connection against external interference, since insufficient protection against the influence of the process of obtaining information can negatively affect the reliability of the results. obtained during the remote conduct of investigative and procedural actions. Credibility can be determined only if there is a real opportunity to comprehensively manage and control the process of obtaining evidentiary information during remote investigation and court proceedings.

Provisions regarding the use of videoconferencing during pretrial investigation and court proceedings also raise certain concerns about possible "hacker interventions" during videoconferences, loss of procedural documents during transmission over the Internet, disclosure of information, etc.

In addition, it is necessary to ensure the stability of communication channels and technical protection of information at the state level. For example, video conferencing experts believe that outside

interference can be prevented by following certain rules. In particular, high-quality communication service, stable and reliable power supply for telecommunication equipment and video conferencing is necessary. In addition, the room in which the video conference is installed must have optimal noise and echo-absorbing conditions. It is desirable to place the equipment correctly in relation to the global background of the room. As for setting up telecommunication equipment and video conferencing, it should be correct in relation to maintaining the quality of the communication service. The requirement for the competence of service personnel and their technical support is also essential [4].

In clause 3 of Art. 232 of the Code of Criminal Procedure refers to the possibility of asking questions and receiving answers of persons participating in investigative (search) actions remotely, the possibility of exercising other procedural rights granted to them and performing procedural duties provided for by the Code of Criminal Procedure. In this case, all participants of the video conference must listen and see each other in real time and thus ask questions, receive answers, provide documents and other items for review, etc. [5].

Instead, when conducting procedural actions during a video conference, the broadcast should be organized in such a way that not only the interrogated person, but also the entire room where the interrogation takes place, as well as all persons present during the interrogation – to observe their reaction to specific statements and question. Otherwise, the obtained evidence may be deemed inadmissible due to possible influence on the interrogated person by the persons present at the interrogation.

In “virtual” proceedings, there is a real danger of narrowing the possibilities of the parties to the process, since it is quite problematic to submit written petitions, evidence and other procedural documents to the investigator, prosecutor, judge for consideration by such a participant, especially these possibilities are significantly complicated during the stay in the enforcement institution punishment [6, c. 262].

The quality of the reproduction of the communication should be so clear and large that the people on the other side of the video communication can see the entire room in which the video conference is being held. This is necessary to find out whether there is pressure on the person of the victim, witness, etc. in the room, outside the camera. It is also important for a specialist to make a parallel video recording of such a procedural action in order to provide for the right to familiarize with the video, submit comments to it and receive copies of it by the participants of the proceedings at their request. The use of an additional technical means is noted in the protocol. The following question arises: how exactly should the victim or witness sign the protocol if the broadcast takes place in different cities? If a person is on the other side of the video conference, how to get a receipt explaining his rights and obligations, responsibility for refusing to testify or for giving knowingly false testimony? [7, c. 192].

However, the Law of Ukraine “On Electronic Documents and Document Management” provides a legal basis for certifying documents using an electronic signature in accordance with the procedure established by law, which is a necessary condition for conducting electronic document management. Therefore, under the conditions of settlement of these issues at the legislative level, this issue can be resolved.

In accordance with Part 6 of Art. 224 of the Criminal Procedure Code of Ukraine, the interrogated person has the right to use his own documents and notes during the interrogation, if his testimony is related to any calculations and other information that is difficult to remember. When interrogating by video conference, it should be possible to transfer the information contained in such documents and notes. This can be achieved by scanning and entering the records into a computer storage medium, which is then transmitted by facsimile to the other party's location.

Modern video conferencing systems provide an opportunity to work with data, including when signing documents. For this purpose, a “white board” is connected to the system – a special attachment to the accessory, which opens a window in which each participant can enter both text and graphic images (signature), which become visible to each participant [6].

In this regard, there is a valid proposal of the legislator, which provides for the obligation to record the progress and results of investigative actions and procedural actions in court with the help of technical means of video recording. This circumstance will allow, in case of doubt, to identify the person in the future.

5. Conclusions.

Conducting some investigative (search) actions (interrogation, simultaneous interrogation of two previously interrogated persons, presentation of a person for identification) in the conditions of emergency legal regimes can be implemented remotely. Instead, the institution of remote investigation in Ukraine needs a better legislative regulation. First of all, it is necessary to more clearly regulate procedural issues regarding the use of technical means, the legal status of persons (who are present during the interrogation, certify the identity of the person being interrogated) and specialists who ensure the quality of communication, etc. Secondly, during such proceedings, in order to avoid abuse and ambiguous interpretation by the specified participants in the process, it is necessary to explain in the CPC: "what other grounds are considered sufficient for the use of videoconferencing", "when the image and sound quality is adequate", "when information security regarding the video conference is considered to be respected." Measures to ensure the stability of communication channels and technical protection of such information at the state level are very necessary.

References:

1. Osoblyvosti provadzhennia dopytu pidozriuvanoho (obvynuvachenoho) z metoiu nedopushchennia tortur ta inshykh porushen prav liudyny (2004): [posibnyk] / [V.K. Veselskyi, V.S. Kuzmichov, V.S. Matsyshyn, A.V. Starushkevych]. Kyiv: Natsionalna akademiia vnutrishnikh sprav Ukrainy. 148. [in Ukrainian].
2. Drozd V. H. (2020) Problemni pytannia provedennia odnochasnoho dopytu v umovakh pandemii korona virusu COVID-19 ta epidemii tuberkulozu. Naukovi visnyk publicznego ta pryvatnoho prava. 153–157. [in Ukrainian].
3. Chernychenko I.V., Matsola A.A. (2023) Osoblyvosti provedennia slidchykh (rozshukovykh) dii v umovakh voiennoho stanu. Elektronne naukove vydannia «Analychno-porivnialne pravoznavstvo». 358–363. [in Ukrainian].
4. Pavlova N.V. (2013) Problemy ta perspektyvy dystantsiinoho sudochynstva. Naukovi visnyk Dnipropetrovskoho universytetu vnutrishnikh sprav. № 2. 477–484. [in Ukrainian].
5. Kryminalnyi protsesualnyi kodeks (2012): Zakon Ukrainy vid 13 kvitnia 2012 roku. № 4651-VI: URL: <https://zakon.rada.gov.ua/laws/main/index>. [in Ukrainian].
6. Shyrina S.A. (2011) Dystantsiinyi sudovi rozghliad sprav pro administratyvni pravoporushennia, poviazani iz bezpekoiu dorozhnoho rukhu. Mytna sprava. №6(78). 260–265. [in Ukrainian].
7. Levenets A. (2019) Taktyka prediavlennia dlia vpiznannia osoby v rezhymi videokoferentsii. Pidpriemstvo, hospodarstvo i pravo. 190–193. [in Ukrainian].

Natalia Pavlova,

*Candidate of Law, Associate Professor,
Associate Professor of Criminalistics,*

Forensic Medicine Department of Dnipropetrovsk State University of Internal Affairs

E-mail: Pavlova_Natalia_vvv@ukr.net

ORCID: <https://orcid.org/0000-0002-1572-4648>