

TACTICAL FEATURES OF THE INTERROGATION OF WITNESSES DURING THE INVESTIGATION OF THE FORCED DISAPPEARANCE OF A PERSON

Push Sergii

Annotation. *The scientific article is devoted to the development of forensic provisions and practical recommendations aimed at improving the organization and tactics of witness interrogation during the investigation of the enforced disappearance of a person. It is emphasized that the achievement of a positive result in the detection and investigation of crimes provided for in Art. 146-1 of the Criminal Code of Ukraine, depends on the establishment of an effective mechanism of interaction between the investigator and operative units, the organization of an intensive search for the victim, complex and operational application, along with obtaining statements, other investigative (search) actions and covert investigative (search) actions. It was concluded that in criminal proceedings of the specified category, the following must first be established: eyewitnesses to the crime; persons who were seen near the scene of the crime shortly before the crime was committed or in the company of the missing person; acquaintances of the victim and (or) criminal (close relatives and family members, friends, roommates), who are aware of his lifestyle, daily routine, intentions, connections, conflicts and problems; neighbors of the victim; persons who saw the victim shortly before the disappearance and can explain the specific circumstances of his behavior, the possible direction and path of movement, signs of the appearance of those probably involved in the abduction; persons who were present at the transfer of redemption; eyewitnesses who observed the circumstances of the release of the abducted person; employees of law enforcement agencies. The organizational and tactical principles of the interrogation of the relevant category of witnesses at the initial stage of the investigation have been determined.*

Key words: *forced disappearance of a person, kidnapping of a person, tactics, testimony, interrogation of a witness.*

1. Formulation of the problem.

At the constitutional level, it is determined that a person, his life, health, honor and dignity, inviolability and security are determined by the highest social value (Article 3) [1]. Also, Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006) states that the widespread or systematic practice of enforced disappearance constitutes a criminal offense against humanity as defined in applicable international law and entails the consequences provided for such applicable international law [2].

Since the beginning of 2014, Russia, its troops and supporters have been committing the most serious international crimes on the territory of Ukraine, in particular, war crimes and crimes against humanity. The principles of the rule of law and the protection of human rights are fundamental to civilized countries, and therefore it is fundamentally important that all these crimes are revealed and the guilty brought to justice [3]. The armed conflict led to a wide range of violations of human rights, both of civilians and combatants, in particular, the right to life, liberty and personal integrity. These include, in particular, arbitrary detentions and enforced disappearances, torture and ill-treatment, as well as conflict-related sexual violence [4, p. 8].

These events, as well as the full-scale armed aggression that began in Ukraine on February 24, 2022, led to a change in the paradigm of the state's criminal-legal response to the commission of, among other things, criminal offenses against a person's will. This also touched on such an illegal phenomenon as the enforced disappearance of a person, which has reached its peak during modern events.

At the national level, the Law of Ukraine "On the Legal Status of Missing Persons" adopted by the Verkhovna Rada of Ukraine on July 12, 2018, entered into force on August 2, 2018, made changes to a number of legal acts [5], in particular to the Criminal Code of Ukraine, supplementing it new article 146-1 "Forcible disappearance". The feasibility of criminalizing enforced disappearance is related to the specificity of the legal nature, the legal status of the prohibition of enforced disappearance in international law, as well as the specifics of Ukraine's obligations arising from the Convention and the monitoring practice of the Committee on Enforced Disappearances of the national legislation of the States participating in the Convention [6, p. 16]. In addition, the entry into force of the Criminal Procedure Code of Ukraine in 2012 forces us to reconsider certain issues of collecting and verifying evidence in criminal proceedings based on the fact of the enforced disappearance of a person.

2. Analysis of recent research and publications.

Methodological recommendations for documentation and investigation of criminal offenses provided by Art. 146-1 of the Criminal Code of Ukraine, are of great theoretical value and practical significance. At the same time, in the conditions of the new Criminal Code of Ukraine, taking into account the realities of today, special attention needs to be paid to clarifying the tactical features of the interrogation of witnesses on the facts of the enforced disappearance of a person in criminal proceedings of the specified category.

3. Forming the purpose of the article (setting tasks) – the development of forensic regulations and practical recommendations aimed at improving the organization and tactics of witness interrogation during the investigation of the enforced disappearance of a person.

4. Presentation of the main research material.

According to the legislator's definition of the concept of "investigative (search) actions", they are the main tool of the process of proof in criminal proceedings, which, according to clause 2 of Art. 91 of the Criminal Procedure Code of Ukraine, consists in the collection, verification and evaluation of evidence in order to establish the circumstances that are important for criminal proceedings, and therefore, to ensure the implementation of the tasks of the criminal justice system in relation to a full, quick and impartial investigation of a criminal offense [7, p. 88].

Each investigative (research) action has certain features, they differ in the specifics of immediate tasks, tactical techniques and methods of achieving a specific goal, the composition of participants, etc., but at the same time, in their totality, they form a complete system [8, p. 163].

Interrogation of witnesses is the most common investigative (search) action during the investigation of illegal deprivation of liberty or abduction of a person.

As evidenced by the analysis of criminal proceedings, the enforced disappearance of a person is usually carefully prepared. Despite the fact that the mentioned criminal offenses are usually committed in the presence of eyewitnesses, which cannot be established in all cases. This is due to the fact that kidnappers seek to minimize the danger of eyewitnesses (they try to commit abduction in sparsely populated places, carry it out quickly, use "masking of behavior"). In some places, citizens do not want to participate in criminal proceedings as witnesses due to fear for their lives and health, family members and loved ones.

In such criminal proceedings, first of all, the following are established: eyewitnesses to the crime; persons who were seen near the scene of the crime shortly before the crime was committed or in the company of the missing person; acquaintances of the victim and (or) criminal (close relatives and family members, friends, roommates), who are aware of his lifestyle, daily routine, intentions, connections, conflicts and problems; neighbors of the victim; persons who saw the victim shortly before his disappearance and can explain the specific circumstances of his behavior; persons who were present at the transfer of redemption; eyewitnesses who observed the circumstances of the release of the abducted person; employees of law enforcement agencies.

The specifics of committing the specified criminal offenses allow us to distinguish the following categories of witnesses: neighbors, relatives of an acquaintance; persons to whom demands were made for the payment of a ransom for the release of a kidnapped person; eyewitnesses of the surveillance of the victim, which was carried out by the kidnappers before her abduction; eyewitnesses of the capture of the victim; eyewitnesses of the forcible detention of a kidnapped person.

Interrogations of witnesses in the studied category of criminal offenses, depending on the volume, nature of possession of information and methods of obtaining it, can be classified into several groups: interrogation of witnesses – eyewitnesses of the capture of the victim by criminals; interrogation of witnesses of preparation of criminals for kidnapping; interrogation of witnesses who are relatives, acquaintances and colleagues of the abducted; interrogation of witnesses - eyewitnesses to the release of the kidnapped [9, p. 21].

Acquaintances or colleagues, casual eyewitnesses of the crime, close relatives and family members can be the applicant and witness - an eyewitness to the physical capture of the victim by criminals. Interrogation of such witnesses is a primary investigative (search) action. The information obtained during the interrogation of such a witness may contain testimony about the person's involvement in the crime, or may, on the contrary, confirm the suspect's alibi.

In some cases, the applicant witnesses the preparation of criminals for illegal deprivation of liberty or kidnapping. In most cases, such witnesses can be colleagues of criminals (in particular, if the identity of the kidnappers is established); relatives of kidnappers; persons from whom criminals purchased firearms; owners of vehicles attempted to be used or used by criminals. Interrogation of such witnesses can take place in a conflict situation, primarily this concerns relatives of the criminal. Using the right granted by Art. 63 of the Constitution of Ukraine, they may refuse to testify, which may limit the possibility of the investigators obtaining information about the identity of the kidnapper and the circumstances of the criminals' preparation for the kidnapping [10, p. 74–76; 11, c. 113].

As noted by V.V. Burlak, during interrogations of close relatives and family members, acquaintances, and colleagues of the abducted person, two situations may arise: the person gives true, complete testimony about the events that took place; the person does not hide the fact of kidnapping, but refuses to provide information related to the demands of the kidnappers. During the interrogation of witnesses in the first situation, the investigator faces the task of establishing as precisely as possible the nature of the criminals' threats, how the witnesses received them (in writing, on video or audio tapes, through messengers), the measures taken by the interrogators in order to release the kidnapped. During the questioning of witnesses in the second situation, investigators are often faced with reluctance to testify about the actions of criminals, their demands on close relatives and family members of the abducted. This is due to the fact that the kidnappers set the following conditions: if the latter do not report the abduction to the law enforcement authorities, then they (criminals) will release the abducted person after fulfilling the conditions put forward by the relatives [10, p. 74–76].

In these cases, the investigator must convince the interrogated person of the falsity of his position. If the witness is afraid of revenge by the criminals, it is necessary to explain that he and his family members will be provided security as persons participating in the criminal proceedings in accordance with the current legislation.

We found out that the persons to whom demands were made for the payment of the ransom were usually relatives and relatives of the abducted person. During their interrogation, first of all, it is found out from whom and under what circumstances they learned about the abduction; what events preceded it; did

they observe anything unusual in the mood and behavior of the abducted person (irritability, a change in the usual routine due to this, refusal of previously planned activities, etc.); did the abductee tell about threats, extortions, surveillance before the disappearance; whether the interrogators did not notice the surveillance of the stolen, etc. Then they find out from the interrogator who and in what form made the ransom demand. If it was done over the phone, it is worth asking questions about when the call came, what the interrogated person was doing before that, who he was with, whether the kidnappers could monitor him. It is desirable to receive testimony about what exactly the kidnappers said with a verbatim reproduction of their phrases [Voitovych, p. 88]. The circumstances of the meeting with the kidnappers or their intermediaries, the demands that were made, and the special characteristics of the persons are established.

During the interrogation of the witnesses who witnessed the surveillance of the victim of the crime, it is necessary to find out when they noticed the surveillance of the abducted person, who and how it was carried out. It is also important to establish where the specified persons were and who could see them. Witnesses who were eyewitnesses to the capture of the victim find out where they were at the time of the capture, at what distance they were from the participants in the event, what actions they took when violence was committed against the victim. When interrogating this kind of person, the main tactical technique is the maximum detail of testimony.

In addition to interrogations of eyewitnesses to the abduction, interrogations of neighbors, co-workers, acquaintances and relatives of the victims are important. The specified persons are investigated: the interests of the victim, the nature of his activities, behavioral characteristics, the presence of diseases, attitudes to alcohol and drugs; environment and circle of friends; had a hostile or hostile relationship with someone; who could be interested in his abduction; where and with whom the victim was last seen, whether they knew about his intentions and plans on the eve of the abduction; under what circumstances the witness learned about the abduction; signs of the stolen (his clothes and things that were with him), whether he had money, documents, valuables [6, p. 174].

In situations where the witness received information from the victim, it is desirable, in addition to detailed testimony, about what the victim told about the circumstances of his abduction and detention, to find out whether he did not talk about the events that preceded the commission of the crime: whether he had conflicts with someone; did he receive threats; did not notice the surveillance behind him; whether there were any unusual phone calls or visits; whether there were any strange, incomprehensible events, etc.

Often during the investigation of criminal offenses provided for by Art. 146-1 of the Criminal Code of Ukraine, minors are subject to interrogation as witnesses. Article 226 of the Criminal Code of Ukraine defines certain aspects of the interrogation of a minor, namely: it must be conducted in the presence of a legal representative, a teacher or a psychologist, and if necessary, a doctor; the interrogation cannot last more than an hour without a break, and in general - more than two hours a day; to persons who have not reached the age of 16, the obligation to give truthful testimony is explained, without warning of criminal liability for refusal to testify and for knowingly false testimony; explanation to the legal representative, teacher, psychologist, doctor of their obligation to be present during the interrogation, as well as the right to object to questions and ask questions [12].

Finally, we note that in connection with the specifics of the criminal offenses provided for in Art. 146-1 of the Criminal Code of Ukraine, the location of a missing person is often the territory of another state. In the case of establishing the whereabouts of a person who has disappeared in this way on the territory of another state, or on the territory not under the control of Ukraine, he is declared wanted in accordance with the provisions of the International Convention on the Protection of All Persons from Enforced Disappearances (2006) [13; 14] and the Law of Ukraine "On the Legal Status of Missing Persons" (2018) [5].

5. Conclusion.

Therefore, the questioning of witnesses during the investigation of the enforced disappearance of a person is a typical investigative (search) action, which is carried out in accordance with the prescriptions of the criminal procedural legislation (Articles 224–227 of the Criminal Procedure Code of Ukraine),

the provisions of the tactics of obtaining testimony developed by criminology, taking into account the peculiarities of the investigative and judicial practice of investigating this category of crimes.

In such criminal proceedings, first of all, the following are established: eyewitnesses to the crime; persons who were seen near the scene of the crime shortly before the crime was committed or in the company of the missing person; acquaintances of the victim and (or) criminal (close relatives and family members, friends, roommates), who are aware of his lifestyle, daily routine, intentions, connections, conflicts and problems; neighbors of the victim; persons who saw the victim shortly before the disappearance and can explain the specific circumstances of his behavior, the possible direction and path of movement, signs of the appearance of those probably involved in the abduction; persons who were present at the transfer of redemption; eyewitnesses who observed the circumstances of the release of the abducted person; employees of law enforcement agencies.

Achieving a positive result in the detection and investigation of crimes provided for in Art. 146-1 of the Criminal Code of Ukraine, depends on the establishment of an effective mechanism of interaction between the investigator and operative units, the organization of an intensive search for the victim, complex and operational application, along with obtaining statements, other investigative (search) actions and covert investigative (search) actions.

References:

1. Korynevych A. Spetstrybunalu shchodo zlochynu ahresii proty Ukrainy buty [There should be a special tribunal for the crime of aggression against Ukraine]. URL: https://lb.ua/world/2023/03/30/550411_spetstrybunalu_shchodo_zlochynu_agresii.html (Data zvernennia 05.06.2023) [In Ukrainian].
2. Sytuatsiia z pravamy liudyny v Ukraini v konteksti zbroinoho napadu rosiiskoi federatsii [The situation with human rights in Ukraine in the context of an armed attack by the Russian Federation]. (2022) 56 [In Ukrainian].
3. Aktualni pytannia kryminalnogo protsesu Ukrainy [Current issues of the criminal process of Ukraine]: navch. posib. / Blazhivskiy Ye.M., Koziakov I.M., Tolochko O.M., Miroshnichenko S.S., Vlasova H.P.ta in.; za zah. red. Ye.M. Blazhivskoho (2013) Kyiv: Nats. akad. prokuratury Ukrainy; Tsentр uchbovoi literatury. 304 [In Ukrainian].
4. Orhanizatsiino-pravovi zasady diialnosti slidchykh pidrozdiliv Natsionalnoi politsii Ukrainy [Organizational and legal principles of activity of investigative units of the National Police of Ukraine]: monohrafiia / V.H. Drozd, A.V. Ponomarenko, S.Ye. Ablamskyi ta in. (2020) Kherson: Helvetyka. 352 [In Ukrainian].
5. Olishevskiy V.V. (2005) Rozsliduvannia ta poperedzhennia vykradennia liudyny, vchynenoho z koryslyvykh motyviv [Investigation and prevention of kidnapping committed for selfish reasons]: avtoref. dys. ... kand. yuryd. nauk: 12.00.09. Kharkiv. 25 [In Ukrainian].
6. Burlaka V.V. (2010) Osoblyvosti taktyky dopytu svidkiv pry rozsliduvanni nezakonnoho pozbavlennia voli abo vykradennia liudyny [Peculiarities of the tactics of questioning witnesses in the investigation of illegal deprivation of liberty or abduction of a person]. Yurydychna nauka: politychni, ekonomichni ta sotsialni vytoky sohodennia: materialy III Mizhnar. nauk.-prakt. konf. (Kyiv, 29–30 zhovt. 2010 r.): u 2 t. Kyiv. T. 2. 74–76 [In Ukrainian].
7. Avramenko O.L. (2011) Osoblyvosti pochatkovoho etapu rozsliduvannia vykradennia liudei, vchynenykh zlochynnymy hrupamy [Peculiarities of the initial stage of the investigation of kidnapping committed by criminal groups]. Dysertatsiia na zdobuttia naukovooho stupenia kandydata yurydychnykh nauk za spetsialnistiu 12.00.09 – kryminalnyi protses ta kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diialnist. Natsionalna akademiia vnutrishnikh sprav. Kyiv. 228 [In Ukrainian].
8. Voitovych Ye. M. (2021) Metodyka rozsliduvannia nasylnytskoho znyknennia liudyny [Methods of investigating the enforced disappearance of a person.]. Kvalifikatsiina naukova pratsia na pravakh

rukopysu. Dysertatsiia na zdobuttia naukovooho stupenia doktora filosofii za spetsialnistiu 081 – «Pravo». Natsionalna akademiia vnutrishnikh sprav, Kyiv. 276 [In Ukrainian].

9. Mizhnarodna konventsiiia pro zakhyst usikh osib vid nasylnytskykh znyknen [International Convention on the Protection of All Persons from Enforced Disappearances]: rishennia Orhanizatsii Obiednanykh Natsii vid 20 hrudnia 2006 r. Verkhovna Rada Ukrainy. URL: https://zakon.rada.gov.ua/laws/show/995_I54 (Data zvernennia 05.06.2023) [In Ukrainian].
10. Pro pryiednannia Ukrainy do Mizhnarodnoi konventsii pro zakhyst usikh osib vid nasylnytskykh znyknen [On the accession of Ukraine to the International Convention on the Protection of All Persons from Enforced Disappearances]: Zakon vid 17 cherv. 2015 r. № 525-VIII. Verkhovna Rada Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/525-19#n2> (Data zvernennia 05.06.2023) [In Ukrainian].
11. Pro pravovyi status osib, znyklykh bezvisty [About the legal status of missing persons]: Zakon vid 12 lyp. 2018 r. № 2505-VIII. Verkhovna Rada Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/2505-19> (Data zvernennia 05.06.2023) [In Ukrainian].

Sergii Push,

*Assistant student of the Department of Law
of the Private Higher Educational Institution "European University"*