

CERTAIN ASPECTS OF EVIDENCE COLLECTION IN THE INVESTIGATION OF CRIMES IN THE SPHERE OF OFFICIAL ACTIVITIES USING THE AUTHORITIES OF OFFICIAL PERSONS

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Annotation. *The scientific study is devoted to the analysis of problematic aspects of the investigation of crimes in the field of official activity using the powers of officials, in particular, the identification of ways to overcome opposition to the investigation, the choice of tactical methods of obtaining testimony, and their possible solution in order to improve the process of documenting and investigating the specified facts. It was established that the choice of tactical techniques for carrying out separate investigative (search) actions in overcoming resistance to the investigation of crimes of the specified category depends on the illegal actions of a person and is carried out by identifying and documenting methods of resistance. It was concluded that the status of the interrogated persons (witness, victim, suspect) depends on the specific situation that arose during the criminal proceedings at the time of the interrogation and the presence of evidence of the official's involvement in the commission of the crime. It was emphasized that the subject of interrogations of certain categories of persons should be based, on the one hand, on the circumstances to be proven, and on the other hand, the nature of the functions performed by the person and the possible extent of awareness of the mechanism of criminal activity should be taken into account. Special attention is paid to choosing the appropriate "format" of the interrogation, ensuring the safety of its participants. It is recommended to choose the tactics of interrogation of officials taking into account the situation of opposition to the investigation, which consists in detailing the information received, in the application of individual tactical methods of exposing untruths, their complexes.*

Key words: *crimes of official activity, investigation, officials, interrogation, testimony.*

1. Formulation of the problem.

The end of the past – the beginning of the current century was marked by the global scale of corruption and its recognition as the main obstacle to the development of international economic relations. This problem has not escaped Ukraine either, as evidenced by the negative rating of our country, which for several years, according to the international organization Transparency International, is among the countries with a high level of corruption [1, p. 188].

It is worth noting that crimes in the field of official activity are usually closely related to other types of criminal activity. Most often, they are the means by which an official commit another, more serious and serious crime in order to achieve the desired criminal result. There are known cases of smuggling, violations of legislation on the budget system of Ukraine, laundering of proceeds obtained through crime, and other crimes committed as a result of abuse of power, excess of power or official powers [2, p. 5].

One of the key directions of the implementation of anti-corruption policy in Ukraine is the effectiveness of the practice of documenting, proving and prosecuting officials who committed (organized the commission of) the relevant crime. After all, as rightly noted by A.V. Shevchyshen, among the reasons for the improper implementation of previous anti-corruption policy programs is the low effectiveness of law enforcement agencies in detecting corruption offenses and bringing the perpetrators to justice, as well as the imperfection of domestic legislation [3, p. 20].

2. Analysis of recent research and publications.

The subject of proof in criminal proceedings, as well as the content of circumstances to be established in criminal proceedings, have been repeatedly analyzed by domestic and foreign scientists in the field of criminal procedure and criminology (Y.P. Alenin, V.P. Bakhin, R.S. Belkin, V.I. Galagan, L.Ya. Drapkin, V.S. Zelenetskyi, V.S. Kuzmichev, V.V. Lysenko, G.A. Matusovskyi, V.O. Obratsov, M.V. Saltevskyi, V.Yu. Shepitko and others).

It should be noted that not all formulated provisions and recommendations of the mentioned scientists can be used in the conditions of the updated criminal procedural legislation of Ukraine. Along with this, as evidenced by investigative practice, the process of investigating crimes in the field of official activity using the powers of officials can be complicated by the following problems: crimes are mostly committed by several persons and are carefully planned; the presence of an intellectual element of the committed act is mandatory; there may be several episodes of criminal activity; opposition to the investigation, etc. Persons who commit the specified crimes have powerful powers while in office and performing their various functional duties.

The circumstances outlined above lead to an increased interest in the investigation of criminal offenses of this category with the aim of developing recommendations aimed at optimizing the entire investigation process and increasing the effectiveness of individual investigative (search) actions aimed at collecting and verifying evidence in criminal proceedings.

3. Forming the purpose of the article (setting tasks).

Currently, there is a need to analyze the problematic aspects of investigating the commission of crimes in the field of official activity using the powers of officials, in particular, identifying ways to overcome opposition to the investigation, choosing tactical methods of obtaining testimony, and their possible solution in order to improve the process of documenting and investigating the specified facts.

4. Presentation of the main research material.

In order to successfully investigate a criminal offense and punish the guilty, authorized persons are obliged to establish the existence of a criminal offense event, its type, participants and all the circumstances that are important for the legal and justified resolution of criminal proceedings, which is done in order to protect and restore the violated rights of victims from criminal punishable act. In particular, this concerns the search for all necessary evidence, its proper verification and evaluation. In the examined category of criminal proceedings, such activity is mostly accompanied by opposition to the investigation.

The opposition to the investigation of the specified crimes can be conditionally divided into two groups: obstacles of a procedural nature (unmotivated closure of criminal proceedings without sufficient grounds; multiple transfer of criminal proceedings from one investigator to another in order to extract important evidence in order to create grounds for closing criminal proceedings, etc.); psychological pressure on the investigator with the demand to stop the pre-trial investigation is usually carried out by means of a bribe or a warning about a possible dismissal.

As noted by Y.P. Zablotskyi, the negative influence on the part of interested parties is expressed, usually, in exerting pressure in various forms on the officials of the bodies of inquiry and pre-trial investigation in order for them to make illegal decisions (unfair, unfounded) regarding the persons brought to justice [4, p. 121]. Such actions can be manifested in offers to bribe authorized persons, discrediting them by filing complaints about their decisions, actions and inaction, threats to the life and health of the investigator, operatives or their family members, etc.

In our opinion, the organization of overcoming resistance to the investigation of crimes in the field of official activity using the powers of officials should be based on the characteristic modern trends of

crime, the generalization of the practice of combating official crimes, on the basis of current legislation and the tactical application of techniques and methods developed by forensic science. The choice of tactical techniques for carrying out separate investigative (search) actions in overcoming resistance to the investigation of crimes of the specified category depends on the illegal actions of the person and is carried out by identifying and documenting methods of resistance.

Significant obstacles to the quick and impartial investigation of crimes in the field of official activity using the powers of officials are also created by false statements of participants in criminal proceedings, which belong to the category of "personal evidence".

It is quite difficult to obtain truthful testimony about the facts of the commission of a selfish crime by officials in connection with the refusal to testify. As indicated by D.A. Bondarenko, first of all, this applies to suspects (accused), whose interests usually objectively contradict the establishment of the truth in the case, and giving testimony is not mandatory for them and acts as a kind of defense. Thus, during the investigation of crimes in which high-ranking officials are involved, they use their position (if no preventive measure is used – detention) to disrupt the interrogation, by accusing the investigator of arbitrariness and gross violation of the criminal procedural law, etc. [5, p. 12].

For this purpose, during the pre-trial investigation, the suspects use the help of an experienced defense attorney, who, acting as an intermediary between the suspect and authorized officials, instructs the client to refuse to testify or change his testimony. At the same time, the refusal to testify is used by the criminal as a means of delaying time, considering the reported suspicion, considering explanations and arguments regarding his own non-involvement in the crime, etc.

In accordance with Part 1 of Art. 223 of the Criminal Procedure Code of Ukraine investigative (search) actions are actions aimed at obtaining (collecting) evidence or checking already obtained evidence in a specific criminal proceeding [6]. Their conduct is the basis for the formation of the evidence base of the criminal proceedings, which will then be used to formulate the accusation [7, p. 663].

The study of investigative practice made it possible to single out the investigative (search) actions that are most often carried out in the proceedings of the specified category, namely: interrogation, search, in particular search of the person, inspection of the scene, inspection of documents, examination, examination of the person. Such investigative (search) actions, such as simultaneous questioning of two or more already interrogated persons, investigative experiment, presentation of a person or things for identification, are mostly carried out when necessary.

Depending on the specific circumstances of the criminal proceedings, the internal conviction of the investigator or prosecutor, and the requests made by the defense, it is decided which of the investigative (search) actions and in what sequence should be carried out.

The most common investigative (detective) action in the investigation of crimes in the field of official and professional activity is an interrogation, the content of which is to receive and record in the form established by the criminal procedural law the testimony of a suspect, accused, witness, victim, expert, containing information about the circumstances known to them, which are important for criminal proceedings.

As evidenced by the analysis of investigative practice, the beginning of the investigation of criminal offenses of the investigated category is usually determined by the interrogation of the applicant, who, in accordance with Part 1 of Art. 60 of the Criminal Procedure Code of Ukraine is a natural or legal person who applied with a statement or notification of a criminal offense to a state authority authorized to initiate pre-trial proceedings, and is not a victim [6]. At the same time, taking into account the fact that the Criminal Code of Ukraine does not provide for the interrogation of a person in the status of an applicant, under specific circumstances, a person who made a statement about the commission of a crime can be questioned as a witness or a victim, depending on whether such a person has been harmed by a certain type of corruption a crime in the field of official and professional activity.

When conducting an interrogation of a person from whom information has been received about the commission of crimes in the field of official activity using the powers of officials, it is appropriate to use audio and video recording, which is drawn attention by some scientists [8, p. 26].

On this occasion D.O. Shumeiko notes that this method of recording the applicant's interrogation can be applied in accordance with Art. 103, 107, Part 5 of Art. 224 of the Criminal Procedure Code of Ukraine under the condition that in a specific situation it is necessary to immediately carry out secret investigative (search) actions, and there is no time to draw up an interrogation protocol, or in the event that the investigator or prosecutor has reasons to fear that the applicant will refuse to testify in the event of opposition to the investigation (exercise of influence, threats, family relations of the applicant and the beneficiary, etc.) [9, p. 84].

In addition to the applicants, witnesses in such proceedings may also be the neighbors and relatives of the official, his colleagues at work, casual eyewitnesses, witnesses and employees of operative units and others. At the same time, in practice, it is often used to interrogate several witnesses at the same time to prevent their collusion and false testimony.

During the interrogation of applicants, victims, witnesses, special attention should be paid to clarifying the circumstances that may later be the subject of a psychological-linguistic examination. After all, the study of criminal proceedings regarding corruption crimes in the field of official and professional activity allows us to ascertain unique cases of the appointment and conduct of such examinations [3, p. 222].

The peculiarity of the pre-trial investigation of the studied category of criminal proceedings is also that it usually begins with respect to a specific official who committed a crime in the field of official and professional activities related to the provision of public services. However, the Criminal Procedure Law does not determine in what status the said official should be interrogated. Based on the analysis of the provisions of the Criminal Procedure Code of Ukraine, the only possible option for obtaining the testimony of such a person is his interrogation as a witness. However, if such a person is subsequently notified of the suspicion of committing a crime, then the evidence obtained during the interrogation of such a person earlier as a witness will be considered to have been obtained with a significant violation of human rights and freedoms, and therefore inadmissible (point 1 part 3 Article 87 of the Criminal Procedure Code of Ukraine) [6].

The specified norm is indisputable, because in the case of questioning a witness, he is warned of criminal liability for refusing to testify and for giving knowingly false testimony (Part 3 of Article 224 of the Criminal Procedure Code of Ukraine). Therefore, obtaining the testimony of such a person, in particular under the threat of criminal liability, and their further use for the formulation of suspicion, accusation and proving the guilt of this person in the commission of a corruption crime in the field of official and professional activity, should undoubtedly be excluded.

Attention should also be paid to the questioning of a person during a pre-trial investigation in a court session, which is provided for in Art. 225 of the CPC of Ukraine. Thus, in accordance with part 1 of the specified article, in exceptional cases related to the need to obtain a person's testimony during a pre-trial investigation, if due to the existence of a danger to the life and health of a witness or victim, their serious illness, the presence of other circumstances that may make it impossible to question them in court or affect the completeness or reliability of testimony, a party to a criminal proceeding, a representative of a legal entity in respect of which proceedings are being conducted, have the right to apply to the investigating judge with a request to conduct the questioning of a person in a court session, including the simultaneous questioning of two or more already interviewed persons [6].

Taking into account the possibility of further changes, especially by witnesses, of their testimony, which they give during the pre-trial investigation, the prosecution quite often in the studied category of criminal proceedings turns to such an interrogation procedure. In order to justify the necessity of conducting it, the investigator, the prosecutor, in the corresponding petition to the investigating judge, refers to the circumstances "that may make it impossible to question a person in court or affect the completeness or reliability of his testimony" (paragraph 1, part 1, article 225 of the Criminal Procedure Code of Ukraine) [6].

Also, in the generalization of the Supreme Court of Ukraine "On the practice of resolution by investigative judges of issues related to investigative (search) actions" dated 03.06.2016, it is noted that the wording "other circumstances" used by the legislator indicates the inexhaustibility of the list of such circumstances, emphasizing the existence of the possibility of making it impossible interrogating a person in court or influencing the completeness or reliability of their testimony.

In addition, in criminal proceedings of the specified category, simultaneous interrogation of two or more already interrogated persons is often carried out in order to verify the testimony of the suspect, victim or other persons about the circumstances of the commission of a criminal offense, as well as to identify all accomplices of illegal actions.

5. Conclusion.

The analysis of such an investigative (investigative) action as interrogation and its types during the implementation of criminal proceedings regarding crimes in the field of official activity with the use of the powers of officials made it possible to identify certain problems related to the imperfection of the procedural order of obtaining evidence and carrying out evidentiary activities in the studied category criminal proceedings.

The status of interrogated persons (witness, victim, suspect) depends on the specific situation that arose during the criminal proceedings at the time of the interrogation and the presence of evidence of the official's involvement in the commission of an official crime. Related to this is the definition of the subject of interrogations of certain categories of persons, which should be based on, on the one hand, the circumstances to be proven, and on the other hand, the nature of the functions performed by the person and the possible extent of awareness of the mechanism of criminal activity should be taken into account.

It is recommended to choose the tactics of interrogation of officials taking into account the situation of opposition to the investigation: presentation of truthful statements and presentation of false statements or refusal to give them. In the first case, the received information is detailed; in the second, separate tactical methods of exposing untruths, their complexes are used, psychological contact with the interrogated person is deepened. Special attention is paid to choosing the appropriate "format" of the interrogation, ensuring the safety of its participants.

References:

1. Lazareva D.V. (2018) Okremi protsesualni aspekty rozsliduvannya zlochyniv, shcho vchyniautsia u sferi sluzhbovoi diialnosti [Separate procedural aspects of the investigation of crimes committed in the field of official activity]. National law journal: theory and practice. 188–191 [in Ukrainian].
2. Romtsiv O.H. (2016) Osoblyvosti podolannya protydii pid chas rozsliduvannya zlochyniv u sferi sluzhbovoi diialnosti [Peculiarities of overcoming resistance during the investigation of crimes in the field of official activity]. Dysertatsiia na zdobuttia naukovooho stupenia kandydata yurydychnykh nauk. 12.00.09 – kryminalnyi protses i kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diialnist. Lviv. 226 [in Ukrainian].
3. Shevchyshen A.V. (2019) Problemy dokazuvannya storonoiu obvynuvachennia u dosudovomu rozsliduvanni koruptsiinykh zlochyniv u sferi sluzhbovoi diialnosti ta profesiinoi diialnosti, poviazanoi z nadanniam publicznykh posluh [Problems of proof by the prosecution in the pre-trial investigation of corruption crimes in the field of official activity and professional activity related to the provision of public services]. Dysertatsiia na zdobuttia naukovooho stupenia doktora yurydychnykh nauk za spetsialnistiu 12.00.09 – kryminalnyi protses ta kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diialnist. Kharkivskyy natsionalnyi universytet vnutrishnykh sprav, MVS. Kharkiv. Kyivskyy natsionalnyi universytet imeni Tarasa Shevchenka, MON Ukrainy. Kyiv. 624 [in Ukrainian].
4. Zablotskyi Yu.P. (2014) Shliakhy znyzhennia rivnia ta podolannya latentnosti sluzhbovykh zlochyniv, shcho vchyniaut pratsivnyky orhaniv vnutrishnykh sprav [Ways to reduce the level and overcome the latency of official crimes committed by employees of internal affairs bodies]. Naukovyi visnyk Natsionalnoi akademii vnutrishnykh sprav. № 4. 211–222 [in Ukrainian].
5. Bondarenko D.A. (2008) Rozsliduvannya zlovzhyvan vladoiu abo sluzhbovym stanovyschem ta perevyschen vladoy abo sluzhbovykh povnovazhen (kryminalistychna kharakterystyka ta pochatkovyi etap rozsliduvannya) [Investigation of abuse of power or official position and excesses of

power or official authority (forensic characteristics and the initial stage of the investigation)]: avtoref. dys. ... kand. yuryd. nauk: 12.00.09. Zaporizhzhia. 18 [in Ukrainian].

6. Kryminalnyi protsesualnyi kodeks Ukrainy vid 13 kvitnia 2012 roku [Criminal Procedure Code of Ukraine]. URL: <http://zakon2.rada.gov.ua/laws/show/4651-17/page>. (Data zvernennia 06.06.2023).
7. Hloviuk I.V. (2014) Povnovazhennia prokurora ta kerivnyka orhanu dosudovoho rozsliduvannia (u konteksti zakonoproektnykh propozytsii) [Powers of the prosecutor and the head of the pre-trial investigation body (in the context of legislative proposals)]. Pravove zhyttia suchasnoi Ukrainy: materialy Mizhnarodnoi naukovo-praktychnoi konferentsii: u 2 t. Odesa: Yurydychna literatura. T. 1. 661–663 [in Ukrainian].
8. Cherniavskiy S.S., Vakulenko O.F., Tolochko O.M. ta in. (2014) Osoblyvosti rozsliduvannia pryiniattia propozytsii, obitsianky abo oderzhannia nepravomirnoi vyhody sluzhbovoiu osoboiu [Peculiarities of the investigation of the acceptance of an offer, promise or receipt of an illegal benefit by an official]: metod. rek. Kyiv: Nats. akad. vnutr. sprav. 65 [in Ukrainian].
9. Shumeiko D.O. (2015) Rozsliduvannia pryiniattia propozytsii, obitsianky abo oderzhannia nepravomirnoi vyhody sluzhbovoiu osoboiu [Investigation of the acceptance of an offer, promise or receipt of an improper benefit by an official]: dys. ... kand. yuryd. nauk: 12.00.09. Dnipropetrovskiy derzhavnyi universytet vnutrishnikh sprav. Dnipropetrovsk. 256 [in Ukrainian].

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