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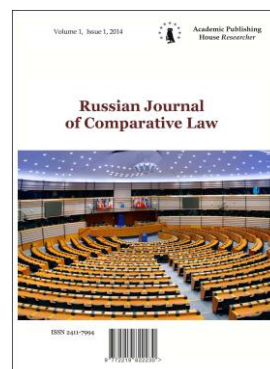
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On the Effectiveness of Criminal Investigation Related to Armed Conflicts

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Abstract

This article examines legal problems of arranging effective criminal investigation related to armed conflicts. Modern technologies are increasingly relied on in order to ensure the integrity, objectiveness, and reliability of result of special expert procedures. Consideration is given to the possibility of implementing the so-called “offensive approach” in criminal investigation. The author also examines legal relationships this approach and the active position of civil society in the process of the said investigations. The importance of the expert own initiative in dealing with the evidence is also highlighted. Investigation of crimes related to armed conflicts is a complex issue entailing not only the issues of criminal procedure but the issue of implementing human rights at large.

Keywords: criminal investigations, effective investigation, armed conflicts, trace picture, multiple traces, special examination.

1. Introduction

Armed conflict expose civilians to danger arising from military actions or resulting from such actions. Often military actions start suddenly followed by civilian casualties, destruction of infrastructure, fire, disruption in water and food supply systems, not to mention disruption in access to medical aid, and other socially dangerous phenomena. Such events cause reactions in the public sphere. And theoretically, increased public awareness of the consequences of armed conflicts on the part of the NGOs, civil society and the mass media should serve as a guarantee of effective investigations.

Various legal aspects of organizing effective criminal investigation have been studied by many Russian scholars such as, e.g., A.A. Arzumanyan, Ie.N. Astashkina, R.S. Belkin, Iu.P. Garmayev, V.Z. Lukashevich, N.A. Marochkin, A.M. Moiseiev, V.V. Shymanovskiy, etc. However, the problem of organizing an effective investigation of crimes on the territories affected by armed conflicts, is still not widely researched.

2. Materials and methods

This paper utilizes publicly available information about criminal investigation related to armed conflict carried out by investigative authorities of the self-appointed state. Research publications on theoretical issues of criminal procedure and criminal law, as well as forensic examination are used. The author utilizes general methods of legal research in dealing with the issues under consideration.

3. Discussion

When it comes to post-Soviet legal regulation, each crime is characterized by a certain trace picture. The trace picture of the event being investigated implies an integral system of information relevant to the crime which is established as a combination of material elements of the crime under investigation specifying

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the circumstances of the case, and the procedural mechanism of investigation used to establish the material circumstances of the case. [1, p. 15]. The traces of crimes related to armed conflicts are examined using different technical and tactical means, techniques and methods.

Modern scientists-criminalists still uphold the validity of case forensic studies of the crime scene conducted by G.L. Granovskiy already in 1977 [2]. The important features of such expert examination are complex nature of its object and the use of systematic approach in forensic studies [3, p. 177]. However, the appointment of experts and the procedure of expert examination of the crime scene are accompanied by many problems related mainly to the unpredictability of expert technical aid which is necessary for examination. Professional competence of examination experts is not always fully compatible with the concrete system of informative elements of the crime scene. To ensure the completeness of a comprehensive study of the crime scene special expert institutions are addressed to in order to obtain the possibility of independent expert aid. Expert technologies are an integral part of effective involvement of independent experts who provide for the investigation the available resources of the relevant expert institution [4].

The investigation at the crime scene is important for establishing the mechanism of crime investigation with respect of all its separate stages [5, p. 237]. That is why the task for forensic studies of a crime scene in general is a fundamental element of the mechanism of investigating the events having occurred and at the given terrain, building, or vehicle.

In order to ensure the completeness of case investigation scientific literature suggests to use a simulation method [6, p. 19]. Reconstructing a model of a crime scene is based on the information approach, according to which the scene is considered as system of information signs. These signs are component elements of such a model in forensic studies which are arranged, according to expert techniques which are used for the detection and study. Current research also is in favour of using a two-dimensional matrix (table) as an investigation technique [7, p. 56]. More particularly, the matrix or table is drawn which is filled in with various features of the test scene which is filled in with the signs related to specific expert techniques. As a result, each square of the matrix (table) contains a feature which is inherent for the object of criminal investigation which is installed by using the expert techniques. The given matrix (table) represents the model of investigated crime scene. The advantage of this model is that in cases of investigating the crimes connected with armed conflicts it allows to create a sample model of scenes as objects of forensic studies. During the introduction of new techniques of forensic criminal scene studies in the field of armed conflicts this model can be supplemented by adding a column that contains features set by the new techniques. If available techniques can identify the new signs of a crime scene of a certain type, its model is expanded by adding the new lines on the matrix. Due to this, the model can fully represent the crime scene in investigation of crimes related to the armed conflicts as an object of forensic studies, without reference to the presence or absence of technical expert knowledge related to individual techniques practiced by expert institutions. This information model of investigating the crime scene contains special sets of the signs established by different expert techniques. At the initial stage of such investigation, the head of the institution should such matrix with the appropriate model of crime scene, taking into account the features of the tasks, assigned by the investigator. In case if such task does not cover the establishment of scene informative signs fully, the head of expert institution should make an initiative on undertaking a complex of examinations with the available resources of expert institution.

Complex approach towards the investigation of crime scenes which is adhered to by many expert institutions contributes in the effectiveness of using the resources of such institution. By making own initiatives by expert institutions excludes the need for carrying out unnecessary additional researches. Moreover, the complex approach prevents possible events of professional misconduct since the initiative way of decision-making is validated by the head of expert institution. When it comes to professional expert competences, the quality of these competences reveals itself during the performance of various expert task. Using its administrative powers, the head of the institution can assign the materials to be subject for expert examination to different research laboratories or divisions of the relevant expert institutions. In this case, the crime scene is investigated at the same time. Following the outlined approach, the investigation process maximizes the efficiency of interaction between expert institutions and their specialists.

The influence of legal and administrative factors, as well as factors related to the increased public awareness of the crimes determines the trajectories of new tactical approaches towards the examination of traces during investigation of crimes related to armed conflicts. According to the contemporary legal authors, successful solution and investigation of crimes is ensured by the so-called "offensive approach" [8]. This approach is dictated by active interaction between investigative authorities and civil society during the investigation process [9, p. 70]. Such kind of interaction may provide the investigation with additional sources of information, for instance, individuals can provide video recordings of the events related to the crime scene or eye-witness testimonies, as well as with additional details obtained by the journalists, not to mention photos, geodetic maps, lay-outs, plans compiled by the specialists (experts) of the organization, etc.

Reliance on special expert knowledge plays a significant in the process of criminal investigation of crimes related to armed conflicts due to the fact that the events in question receive a wide public awareness

which is spread in the mass media and the social media. Therefore, procedural and legal guarantees of forensic examination as the mode of applying special expert knowledge for the purposes of obtaining information on the evidence is important. A great number of factors attributable to crimes related to armed conflicts necessitates the need for applying various expert methods, often competing between each other. This is why the forensic examination in criminal investigation process related to armed conflicts are characterized by a considerable level of complexity. The literature in this field reveals an idea that an expert should pay special attention to full and detailed disclosure of intermediate conclusions of his investigation in order to ensure its correct perception by all the participants in these proceedings. This result may be achieved by dividing the investigative part of the conclusion not only into questions, but also into separate tasks. This is an illustration of expert reliability, since the expert opinions relate to multi-component tasks, and each separate task relating to the general aim, is disclosed with the full reasoning [10, p. 85].

One should consider the fact that in most cases the trace picture of the crime related to armed conflicts is characterized by inevitable inconsistency. Due to influence of various factors modifying and distorting the traces of the crime, investigation is dependent on a comprehensive forensic expert examination relating to identification and elimination of inconsistencies. Therefore, at the present stage forensic experts are required not only to develop new methods of dealing with evidence but also to improve the procedure of applying these methods in situation with multiple and possibly even fabricated or distorted traces. Such an approach in forensic examination is defined by the term "expert technology", which is understood as a system of rational operations in carrying out a complete and impartial examination of the object of crime [11].

In the course of criminal investigation related to armed conflicts, the traces of crimes, different in their nature (e.g., trace evidence, biological, chemical, and other traces) are identified and examined. In addition, the document traces also matter, including photo and video images, audio recordings, substance traces, subject traces, microscopic objects etc. Therefore, the performance of particular expert tasks, such as identification, classification, diagnostic or situation-related tasks, requires breaking down the trace picture into smaller qualifying stages. Such an approach allows referring to each trace from the perspective of different classification group enabling full and detailed examination of the trace picture of the event [11, p. 161].

As mentioned earlier, the crimes related to armed conflicts cause strong reactions from citizens spreading in the mass and social media. The journalists interview the representatives of law-enforcement authorities asking for their comments in order to obtain information on the progress of investigation, investigative preventative measures, etc. [12, p. 130]. As the result, the public opinion relates not only to the contents of the events but also to the results of interaction with the law-enforcement authorities regarding *ex post facto* measures of preventing possible events in the future, i.e. with respect to ensuring a system of measures aimed at the proactive protection of population, as well as material and cultural values against any dangers arising during armed conflicts, as well as in relation to the process of investigating such events. More than that, the individuals often wish to inquire from public authorities information about the measures aimed preventing any risks of similar events in future, such as, e.g., civil defense training for population; warning of population about any dangers arising during armed conflicts; evacuation of population, material and cultural values to safe regions; providing population with shelters and personal protective equipment; undertaking measures on black-out, salvage and rescue operations in case of any dangers for population during armed conflicts; high-priority provision of population affected by military actions or resulting from them with medical care, first-aid treatment, accommodation without delay; suppression of fires having occurred during armed conflicts; identification and designation of the regions affected by radioactive, chemical, biological contamination (pollution) or otherwise; disinfection of population; decontamination (disinfection) of buildings and structures; special treatment of technical facilities and territories; maintaining public order in the areas affected by armed conflicts; urgent reinstatement of functions of the required utilities in war time; urgent disposal of dead bodies; development and implementation of measures aimed at preservation of facilities materially required for stable functioning of economics and survival of population in armed conflicts; and ensuring the readiness of civil defense forces and means [13, p. 114-115]. Implementation of these measures characterizes the process of ensuring the preventive function in the activities of law-enforcement authorities.

One could claim that information is a primary resource in criminal investigation related to armed conflicts. The author of this articles supports the opinions conveyed in research literature that obtaining information at the maximum possible extent regarding criminal events is a prerequisite for successful criminal investigation [14, p. 215]. And the information obtained during such investigations requires careful towards its examination, processing, and storing. The process of trace picture examination is based not only on the rules of acquisition of information but also on the rules regarding identification inconsistencies during its processing and elimination of these inconsistencies. Therefore, the information component of investigating crimes related to armed conflicts determines the success of the investigation progress, since it requires using a set of non-procedural sources during investigation. Research literature suggests the possibility of applying special knowledge for examination of various discrepancies in the trace picture of the events. For this purpose, diagnostic examinations of comparative nature can be utilized. Implementing such

examinations should rest on the established reference standards on the basis of which the discrepancies may be analyzed. The scientists believe that the results of special examination of crime scenes conducted with the participation of expert-criminologists may be used as such a reference standard [9, p. 75].

In our opinion, in the course of criminal investigation related to armed conflicts one should not disregard the adversarial principle of criminal procedure, known not only in the post-Soviet space but in many other jurisdictions. Having compared the tasks faced by the participants of the proceedings related to special examination of the trace picture of a crime, we can see their complementary nature. It may be explained by the following. When implementing the offensive approach, the authorities update the available so far information regarding the traces of the crime. At the later stages of criminal process the defense can request special examinations aimed at establishing the circumstances which can mitigate or eliminate the guilt of the suspect, accused, or the convicted person. But from the perspective of ensuring the integrity of both, the object of special examination, i.e., the trace picture, and the subjects of special examination, i.e., the forensic expert (or the committee of experts) only a comprehensive, reliable, and impartial expert examination can satisfy all the goals of official proceedings. Special value is entrusted in the eventual initiative of the expert, i.e., his or her active attitude towards the performance of the tasks within the case [15, p. 46]. The author, hence, joins the opinions of the scientists claiming that expert technologies are the means of realizing an initiative nature of special examinations [16].

4. Results

Summarizing our study, we come to a conclusion that in the process of criminal investigation of crimes related to armed conflicts the crime trace picture represents an extensive system of information sources, which vary by their nature, often being contradictory. The impartial position of subjects of judicial proceedings should, at least ideally, ensure a comprehensive special examination of the crimes in question.

5. Conclusion

The active defense strategy corresponds to the so-called offensive nature of the prosecution. Since both, the prosecution and the defense, rely on the results of special expert examination of the trace picture in substantiating their position, the objectification of the investigation requires the initiative of forensic experts (or a committee of experts) during carrying out expert examinations.

We may claim that the expert technologies are the means of ensuring completeness, objectiveness, and reliability of special examination results.

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Некоторые вопросы организации эффективного расследования преступлений, связанных с вооруженными конфликтами

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Аннотация. В статье исследована проблема организации эффективного расследования преступлений, связанных с вооруженными конфликтами. Показано, что средством обеспечения полноты, объективности и достоверности результатов специального исследования являются экспертные технологии. Рассмотрена возможность реализации наступательного подхода в расследовании, а также соотношение между наступательным характером обвинения и активным характером защиты в расследовании преступлений такого рода. Показано значение инициативности эксперта в исследовании доказательств. Установлено, что расследование преступлений такого рода характеризуется множественностью следов, а также широким общественным резонансом, что влечет неизбежные противоречия в исследовании и обобщении результатов расследования. Поддержана позиция об использовании результатов специального исследования места события, проводимого с участием специалиста-криминалиста в качестве эталона диагностических криминалистических исследований сопоставительного характера.

Ключевые слова: преступление, эффективное расследование, вооруженный конфликт, следовая картина, множественность следов, общественный резонанс, информация, специальное исследование.

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