
ҚЫЛМЫСТЫҚ ПРОЦЕСС ЖӘНЕ КРИМИНАЛИСТИКА

УГОЛОВНЫЙ ПРОЦЕСС И КРИМИНАЛИСТИКА

CRIMINAL PROCEDURE AND CRIMINALISTICS

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Concept, maintenance and differentiation of investigation groups and crime scene investigation groups

The article investigates the epistemological and institutional framework of the investigative and operational investigative group. The authors formulated the definition of inquiry and investigation group which reflects the inherent characteristics and explain the substance. Investigative team considered as the organizational form of interaction between participants, criminal prosecution authority services, efficiency of activity which affect the success of the investigation of crimes.

Key words: pre-trial investigation, investigation groups, fraud, crime scene investigation groups, organization of investigation, the psychological profile of the fraudster, the initial stage of investigation, economic crimes, motivation and psychological factors of fraud, criminal behavior, operations.

Researching a widely known concept of the crime scene investigation group, we consider it reasonable to analyse this category and to formulate the definition which would reflect its characteristics and concept, since there is no unity of opinions at interpretation of this institute in the theory.

A.A. Gerasun identified the investigation group as a coordinated activity of several investigators under the guidance of one of them (who initiated proceedings in a case). Such activity provides the rational organization of simultaneous work for fast, full and comprehensive investigation of a difficult and labor-consuming criminal case, and taking measures to crime prevention [1; 11]. According to B.A. Viktorov, it is organization of investigative activity when the investigation is carried out simultaneously by a group of investigators who are specially allocated for these purposes [2; 57].

In our opinion the above mentioned authors unreasonably substitute the concepts, equating the group (the team) to the activity. As it is known, the investigation group represents a number of subjects of criminal prosecution united by a common goal — fast and full investigation of criminal offenses. The specified categories correspond both to the contents and the form.

The object of this research is the crime scene investigation group (further — the CSIG), therefore is appropriate to carry out the analysis of the concepts in parallel. The investigation group (further — the IG) is characterized by a brigade method of investigation, up to drawing up the indictment bill, and differs from the CSIG in its subject structure and time of action. We will pay attention to the theoretical and legislative provisions of the scientists concerning the studied concept and we will consider them in parallel.

According to A.Ya. Dubinsky and Yu.I. Shostak, the crime scene investigation group is an organizational form of the interaction between an investigator and officers [3; 8].

In the acts by the Ministry of Internal Affairs the CSIG is recognized as an organizational form of interaction between the bodies of the Department of Internal Affairs in crime investigation. To eliminate inaccuracies in interpretation and create the uniform understanding and definition of the categorial apparatus, we consider it appropriate to apply to the analysis of the legislative norms.

Article 194 of the Criminal Procedure Code of the Republic of Kazakhstan provides that in pre-judicial investigation in case of complexity or large volume of a case it can be entrusted to a group of investigators and members of investigative bodies (investigation groups and crime scene investigation groups) after the decree is issued. This decision can be made by the head of investigative department or a body of inquiry. The resolution should include all investigators, the officers of investigative bodies who are appointed to investigate, with the investigator as a lead of the group.

In his comment to this norm, M.Ch. Kogamov specifies that the group (team) method of crime investigation has proved itself long ago and is reasonable at investigating the most serious offences committed at any form of complicity, in particular, of the crimes committed by a criminal group. The investigation of such cases typically faces the most active counteraction of offenders to criminal prosecution authorities [4; 79].

Considering that terms of pre-judicial investigation and detention are limited by the criminal procedure legislation (Art. 192 of the Criminal Procedure Code of the Republic of Kazakhstan), formation of investigation groups and crime scene investigation groups is a necessary condition to achieve the purposes by solving the tasks defined in the law, especially as the CSIG has proved its efficiency by the fact of its long-term existence.

Under the complexity of a criminal case A.Ya. Dubinsky and Yu.I. Shostak understood the existence of such characterizing factors as the duration of investigated criminal actions, a large number of defendants, a significant amount of the versions which are subject to check and some other circumstances.

A.Ya. Dubinsky and Yu.I. Shostak have also defined a special importance of a case and the necessity to finish its investigation in short terms [3, 8] as the circumstances causing the need to form an investigation team.

G.A. Kokurin recognized the danger of a crime, its non-obviousness in general or in separate episodes, commission of a number of identical («serial») crimes in one way, existence of a steady criminal group as a sufficient basis for creation of IG and CSIG [5; 12].

I.S. Ulishchenko defines as the basis of creation of investigation group and conducting pre-judicial investigation by several investigators the certain characteristics of a case which cause a necessity to use a group method of investigation, they are: 1) the existence of several versions demanding simultaneous check; 2) the presence of several suspects in commission of several crimes; 3) duration of criminal activity; 4) commission of crimes in several places, in the absence of a possibility of allocation in separate procedure without a damage to investigation; 5) the need of simultaneous research of separate facts of the case, its separate directions, solution of important and separate issues arising during the investigation [6].

The specified circumstances, undoubtedly, are important at an assignment of pre-judicial investigation to the group of investigators and have to be considered at the initial stage of investigation. But in addition, we consider it reasonable to choose a group method of investigation.

Nevertheless, the head of the law-enforcement body is responsible for making a decision on an assignment of pre-judicial production to a group of investigators; it is incorrect to limit this person with strict frameworks and force him or her to make a decision, showing the criteria of the choice as an imperative.

Also, according to the part 3 of Article 194 of the Criminal Procedure Code of the Republic of Kazakhstan, the right to form the investigation group belongs to the Attorney-General of the Republic of Kazakhstan, his deputy, prosecutors of regions and prosecutors equated to them, investigators and the officers of one or several bodies which are carrying out the pre-judicial investigation, with appointment of the prosecutor as the head of this group.

In the bodies of prosecutor's office special prosecutors are appointed to lead the investigation group — the senior assistants (assistants) to regional prosecutors on investigation and leading of the investigative group [7]. According to the Instruction on organization of pre-judicial investigation in the bodies of the prosecutor's office approved by the order of the Attorney-General of Republic of Kazakhstan on March 27, 2015 No. 48 [8] the special prosecutors are assigned to investigate the criminal offenses committed by the law enforcement officers on service including the facts of tortures. Interaction of CSIG and the prosecutor is also regulated by the Instruction on organization of supervision on the legality of pre-judicial investigation approved by the order of the Attorney-General of the Republic of Kazakhstan on March 30, 2015 No. 50 [9].

The crime scene investigation group as a form of interaction between investigators, operative and other services, has proven its viability; time saving is one of its most important advantages of the continuous interaction. If there is a need to carry out investigative activities, the investigator has to give his personal mandate addressed to the chief of body of inquiry with a request to charge the staff of the division with conducting certain actions. This procedure takes some time. If it were possible to give instructions from the officers of

body of inquiry directly to the members of the crime scene investigation group, it would save time and result in a better explanation of the task purpose [10; 66].

Both in theory and in practice there are appeals to fast and full investigation of crimes, prevention of red tape, but, despite it, such facts are frequent.

The investigation of criminal cases in the economic sphere, cases of organized criminal activity, cases that demand a large amount of work are time-consuming. The large amount of time is consumed by the need of carrying out a considerable number of investigative actions, therefore the investigator doesn't meet the deadline established by the law. The specified difficulties have been leveled with the introduction to criminal trial of concept of reasonable terms of investigation within limits set by the law. This innovation is to be proved reasonable and meeting the requirements of practice.

Taking this all into account, it is possible to formulate the purposes and tasks set in the process of formation and organization of activity of investigation groups and crime scene investigation groups.

The purposes of formation of investigation groups and crime scene investigation groups are probably as follows: 1) fast and full investigation of crimes; 2) maximum protection of the constitutional and legitimate interests of citizens (victims, suspects), societies and states.

The heads of the bodies of preliminary investigation and the bodies carrying out operational investigative activity, when they form investigation groups and crime scene investigation groups, face the following tasks: 1) the maximum reduction of the time of investigation and detention of defendants; 2) consolidation of efforts, technical and criminalistic opportunities of several investigators and divisions (bodies) of law-enforcement departments in crime investigation; 3) organizational and psychological optimization of cooperation between investigators and experts; 4) acceleration of exchange of investigative and operational search information between the investigator and the subject of operational investigative activity; 5) the maximum ensuring of the coordinated planning of investigative actions, including at an initial stage of pre-judicial investigation and realization of operational materials.

Thus, the investigation group (team) is the legal temporary organizational formation, created for investigation of a certain criminal case for fast and full investigation of a crime (crimes) and consisting of several investigators, one of them initiates proceedings in a case and leads other investigators.

The crime scene investigation group is a temporary organizational formation based on the law and departmental regulations. It consists of the investigator (investigators), employees of operational departments, subjects of operational investigative activity and other experts headed by the investigator and created for the optimum organization of activities for crime investigation.

The investigation groups and crime scene investigation groups aren't considered as independent subjects of criminal trial neither in the criminal procedure law, nor in the theory. Meanwhile, the majority of crimes is effectively investigated by the crime scene investigation groups, which perform urgent investigative operations and carry out the process of proof on case at the subsequent stages of investigation.

Considering that the investigator keeps the procedural independence and a personal responsibility for the result of the case, the CSIG needs to be recognized as a specific subject of criminal procedure activity. In spite of the fact that criminal proceedings of a case are initiated by the head of the group, each investigator, who works in it, independently and on his own behalf performs procedural operations and makes procedural decisions.

In this regard we think it is appropriate to recognize the crime scene investigation group as a joint subject of crime investigation which operates at the stage of pre-judicial investigation under the corresponding standards of the Criminal Procedure Code.

For the external relations, the authorized officer to interact with other structures can be the head of the crime scene investigation group, representing it in external relations. Being a member of the CSIG every investigator acts according to the plan of investigation and to his responsibilities independently, submitting to the instructions of the head of the group. The officers of the investigation body staffed into the crime scene investigation group perform the written orders of the head of group including instructions of constant character, for example, interrogations of witnesses on a certain criminal episode.

The specified circumstances allow to give a procedural character to the relations of the participants of the crime scene investigation group as a unified subject of investigation. In particular, investigators would have the right to charge the staff of investigative body entering into group with carrying out procedural actions or operational investigative actions not through the head of investigative body as it is formally required now. Such situation, undoubtedly, would promote fast and effective investigation and increase of responsibility of the investigators and members of the crime scene investigation group for their part of work.

References

- 1 Герасун А.А. Бригадный метод расследования в советском уголовном процессе: автореф. дис. ... канд. юрид. наук. — М.: Всесоюз. ин-т по изучению причин и разработке мер предупреждения преступности, 1968. — 23 с.
- 2 Викторов Б.А. Бригадный метод расследования и некоторые процессуальные вопросы // Социалистическая законность. — 1958. — № 8. — С. 57–59.
- 3 Дубинский А.Я., Шостак Ю.И. Организация и деятельность следственно-оперативной группы. — Киев: Омега-пресс, 1981. — 48 с.
- 4 Когамов М.Ч. Комментарий к Уголовно-процессуальному кодексу Республики Казахстан 2014 года. Т. 2. Особенная часть. — Алматы: Жеті жарғы, 2015. — 941 с.
- 5 Кокурин Г.А. Криминалистические и организационные основы деятельности следственно-оперативных групп по раскрытию и расследованию преступлений: автореф. дис. ... канд. юрид. наук. — Свердловск: УПА, 1991. — 222 с.
- 6 Улиценко И.С. Расследование преступлений группой следователей: проблемы правовой регламентации: дис. ... канд. юрид. наук. — М., 1977. — 25 с.
- 7 Положение о Департаменте специальной прокуратуры Генеральной прокуратуры по руководству следственными группами. Утверждено приказом Генерального прокурора от 27 марта 2015 г. № 47. — [ЭР]. Режим доступа: http://online.zakon.kz/Document/?doc_id=38454876#pos=19;-279
- 8 Инструкция об организации досудебного расследования в органах прокуратуры, утвержденная приказом Генерального прокурора РК от 27 марта 2015 г. № 48. — [ЭР]. Режим доступа: <http://www.zakon.kz/4711961-utverzhdjena-instrukcija-ob-organizacii.html>
- 9 Инструкция об организации надзора за законностью досудебного расследования, утвержденная приказом Генерального прокурора РК от 30 марта 2015 г. № 50. — [ЭР]. Режим доступа: <http://prokuror.gov.kz/rus/dokumenty/prikazy-generalnogo-prokurora/ob-utverzhdenii-instrukcii-po-organizacii-nadzora-za>
- 10 Каплан Л.С. Взаимодействие следователя с органами дознания. — Тюмень: Тюменский изд. дом, 1999. — 171 с.

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Тергеу және жедел-тергеу топтарының түсінігі, мазмұны және саралануы

Мақала тергеу және жедел-тергеу топтарының гносеологиялық және ұйымдастырушылық-құқықтық негіздерін зерттеуге арналған. Авторлармен тергеу және жедел-тергеу топтарының өзіне тән сипаттар және мәнін ашатын түсінігі берілген. Қылмыстарды ашу ісі нәтижелі болуына әсер ететін қылмыстық қудалау органдарының қызметтері жедел-тергеу топтарға қатысушылардың ұйымдастырушылық нысаны ретінде қарастырылған.

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Понятие, содержание и дифференциация следственных и следственно-оперативных групп

Статья посвящена исследованию гносеологических и организационно-правовых основ следственных и следственно-оперативных групп. Сформулировано определение следственной и следственно-оперативной группы, отражающее присущие ей признаки и выражающее ее сущность. Следственно-оперативные группы рассмотрены в качестве организационной формы взаимодействия участников, служб органов уголовного преследования, эффективность деятельности которых влияет на успешность расследования преступлений.

References

- 1 Gerassun A.A. *Group method of investigation in the Soviet criminal process*: abstract of a thesis of candidate of juridical sciences, Moscow: All-Union Institute on research of causes and development of crime preventive measures, 1968, 23 p.
- 2 Viktorov B.A. *Social legality*, 1958, 8, p. 57–59.
- 3 Dubinsky A.Ya., Shostak Yu.I. *Organization and activity of crime scene investigation group*, Kiev: Omega-press, 1981, 48 p.
- 4 Kogamov M.Ch. *Comment to the Criminal Procedural Code of the Republic of Kazakhstan of 2014*, 2. Special part, Almaty: Zhety Zhargy, 2015, 941 p.
- 5 Kokurin G.A. *Criminalistic and organizational fundamentals of the activity of crime scene investigation groups in crime investigation*: Abstract of a thesis of candidate of juridical sciences, Sverdlovsk, 1991, 222 p.

- 6 Ulishchenko I.S. *Crime investigation by a group of investigators: problems of legal regulation*: Abstract of a thesis of candidate of juridical sciences, Moscow, 1977, 25 p.
- 7 Provision of the Prosecutor General's Office on the leading investigation groups, approved by the order of the Attorney-General on March 27, 2015, 47, [ER]. Access mode: http://online.zakon.kz//Document/?doc_id=38454876#pos=19;-279.
- 8 Instruction on the organization of pre-judicial investigation in the bodies of prosecutor's office approved by the order of the Attorney-General of the Republic of Kazakhstan on March 27, 2015, 48, [ER]. Access mode: <http://www.zakon.kz/4711961-utverzhdena-instrukcija-ob-organizacii.html>.
- 9 Instruction on the organization of supervision of legality of pre-judicial investigation approved by the order of the Attorney-General of the Republic of Kazakhstan on March 30, 2015, 50, [ER]. Access mode: <http://prokuror.gov.kz/rus/dokumenty/prikazy-generalnogo-prokurora/ob-utverzhdanii-instrukcii-po-organizacii-nadzora-za>.
- 10 Kaplan L.S. *Cooperation of investigator and investigative bodies*, Tyumen: Tyumen Publishing House, 1999, 171 p.

Репозиторий КАРГУ