

# MODERN APPROACHES TO THE PROCESS CONTENT OF SOLUTION AND INVESTIGATION OF TERRORIST CRIMINAL ACTIVITIES IN THE CONTEXT OF THE CURRENT CRIMINAL PROCEDURE LEGISLATION OF THE KYRGYZ REPUBLIC

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## ABSTRACT

*The article presents modern theoretical views on the content components of the process of solution and investigation of crimes, taking into account the specifics of terrorist criminal acts in the context of the CPC of the Kyrgyz Republic, which entered into force on January 1, 2019. formal-logical means and methods of cognition of the problem under study are used. On the basis of the conducted research, the authors set out their own vision of the criteria for the concepts of "solution" and "investigation" of crimes, as well as argued the position of the need to review the traditional three stages of investigation and select five stages, which is justified by the emergence of the distinctive features of the new criminal procedure legislation of the Kyrgyz Republic and the specific features of the group of interrelated terrorist crimes. The five stages proposed by the authors are described. The distinctive features of each of them are presented. An actual aspect as information and analytical support of crime investigation, including the structural elements of such system is thoroughly described. The result of the research with regard to the "four-link" traditional system of forensics as a whole is presented. This system is unacceptable because it has lost its internal unity and order, and therefore authors recommend revising it as a "five-link" system with the sub-sections presented in the article. According to the authors this system meets the new trends and scientific-theoretical directions observed today.*

**Keywords:** Kyrgyz Republic, Solution, Investigation, Scientific-Theoretical Directions, Terrorist Criminal Acts, Crimes.

## INTRODUCTION

It is rightly noted that the detection of crimes depends on the quality of forensic support, and this:

*"Becomes relevant when the significant public danger is evidenced by the increasing number of attacks committed by organized groups, as well as the tendency to merge different criminal groups. However, it is not only the increase in dangerous attacks, but also the fact that crimes committed by organized crime syndicates becoming increasingly highly organized" (Isaeva et al., 2015).*

## LITERATURE REVIEW

In such situation, the effectiveness of crime solution depends largely on the degree of methods development of investigation and the scientific-practical recommendations that are used by agencies of investigation and inquiry at the stage of pre-trial proceedings in the case. In this connection, Zorin (2000) points out that forensic science is a developing science that reacts to the defect of transformation of society and is formed by a reality generated by criminal structures. It is impossible to hide from this science behind the illusions of outdated methods. In turn, Beremkulov (2012) also stresses that:

*"... to solve a criminal act, as well as to solve all the tasks in the investigation, regulated by the criminal procedure legislation, within the established time limits is impossible, if the activity is not guided by special scientifically based and developed methods of investigation, solution and prevention of crimes".*

The authors share the view of the most part of the authors that the priority function of forensic science is to provide the recommendations, the effectiveness and appropriateness of which is verified in the course of investigative and expert activities (Isaeva, 2013). And as Belkin (1997) correctly wrote, such a dependence of development of forensic recommendations on requests of practice has necessary, general and stable character, defining directions of scientific search. But it is true that the process of development of forensic science is two-dimensional, because, on the one hand, the development of theoretical provisions is ahead of practice, but on the other hand, the results of practical activities lag behind scientific theory. And this is logical because this process is systematically balanced, but if it is violated, it can lead to irreparable losses in the field of crime prevention. The authors believe that the content of "solving crimes" concept from a formal point of view should be seen from two aspects, namely, on the one hand, as activities to collect evidence and search for a suspect, and on the other hand, to obtain the necessary evidence of the guilt of the person charged with a criminal act. The analysis of the existing literature on this issue allows the authors to state the following:

### Firstly

The discovery of the crime is an element of the investigation and, as legal concepts, their actions are procedural in nature;

## Secondly

Their relationship is linked to the receipt, analysis and presentation of evidence as appropriate. But at the same time, the content of the concept of "*crime solution*" should be considered from its formal standpoint in two aspects, namely, on the one hand, as an activity to collect evidence (how and which specific act was committed) and to search for a suspect, and on the other hand to obtain the necessary evidence of the guilt of a charged person. Moreover, the clarification of its circumstances does not require observance of the criminal procedure and it's proving. The concept of crime investigation is the legal activity of the investigation subjects, which ensures the solution of the crime event and the proving of the circumstances in accordance with the procedure established by law, with a view to the adoption (by the agencies of investigation and inquiry) of the relevant decision in the criminal case. Thirdly, the authors believe that a procedural act evidencing the solution of a crime is the issuance of a notification of suspicion, which according to Article 233 of the KR Criminal Procedure Code is served to a person if there is sufficient evidence to justify the suspicion in crime. Fourthly, crime solution is an activity at the primary stage of the investigation, and therefore it cannot cover the full range of circumstances that must be resolved at the trial stage. On this basis, it can only be stated that the difference in the content of the concepts of "*solution*" and "*investigation*" of crimes is due to the scope as well as the sequence of receipt and analysis of the set of circumstances relevant to the case.

At the same time, this process of crime solution should be based on the specific tasks of forensic science (Isaeva et al., 2015). Undoubtedly, terrorist crime solution, for example, takes place at the initial stage of investigation, as a result of finding, detecting and consolidating relevant evidence in the case. Therefore, Romanyuk (2006) is right that the criminal procedure legislation does not provide for the requirements related to the need to establish all the elements of the crime at the initial stage of criminal proceedings, but it is assumed that the data will be established indicating the existence of features of a criminal act, provided for in the Criminal Code. Based on the context of the specialized literature, there is no single point of view regarding the number of investigation stages. Thus, Phillipov (2008) believes that the investigation of crimes is actually divided into two stages-the initial and subsequent. According to the author, at the initial stage, the investigator carries out urgent investigative activities and collects evidence, analyses it and draws up an investigation plan. The next stage, according to Phillipov (2008), is to continue to collect, verify and evaluate evidence in order to fully establish all the circumstances of the case. The other group of authors also differentiates the investigation of crimes in two stages. But here, the basis is mainly the procedural aspect, as evidenced by their substantial component.

Thus, Trubachev (1976) and Luzgin (1973) believe that the first stage should include an interval of time covering the stage of initiation of criminal proceedings to the decision to bring a suspect as an accused person. The second and subsequent final stage is the time period from the stage of accused involvement to the completion of the investigation and the transfer of the case file to the prosecutor. Ishenko (2013) and Kustov (2004) differentiate the process of investigation

into three stages. But it can also have some distinctive features. For example, Ishenko (2013) divides them into: initial, subsequent, and final. Kustov (2004) singles out the following three stages as follows: preparatory, initial and subsequent. However, it should be noted that there is a trend, namely, that a number of authors believe that it is reasonable to distinguish between four and five stages of the investigation process. For example, Garmaev (2003) distinguishes such stages as: Verification, versioning, planning stage, stage of checking plan implementation. The authors are not pretending to have indisputable judgments, but meanwhile they believe that the stages of investigation proposed by (Garmaev, 2003) are nothing else but thought-analytical type of activity of subjects engaged in investigation of a crime for the purpose of solving the tasks set before them. Without entering into polemics with other scientists, the authors consider it an argumentative position that the process of investigation stages depends not only on the specific features of a particular category of cases, but also on the distinctive features of criminal procedure legislation (Isaeva et al., 2015).

## RESEARCH METHODOLOGY

Formal-logical methods of cognition, content analysis, comparative-legal methods of scientific cognition are used.

## RESULTS & DISCUSSION

It should be borne in mind that, in accordance with the current Criminal Procedure Code, pre-trial proceedings begin from the moment information is entered into the Unified Register of Crimes. That is, within 24 hours, this Register records the date of receipt of an application, message about the committed crime, or at the direct discovery of circumstances that testify to the crime committed, and based on the entered information the system automatically assigns a criminal case number. This position of the legislator is the basis for a review of the traditional three stages of investigation, which is supported by a majority of forensic scientists. The authors consider it reasonable to identify the following stages:

1. Verification of statements and reports on committed crimes, entered in the Unified Register of Crimes.
2. General organization and planning of the investigation, as well as making typical versions (working hypotheses based on the preliminary results of verification of statements and reports).
3. The initial stage of investigation is characterized by the problem-situation peculiarity of the investigation activity and solution of the main tasks of this stage. The authors believe that in the main tasks of the initial phase should be included: (1) Verification of general versions of the crime events that were put forward after examination of the application, message and other materials in the case that were registered with the URCM; (2) The facts are to be clarified by the investigators; (3) Immediately take measures to collect and preserve evidence that may be lost, and take appropriate measures to search for and apprehend the suspected person; (4) Immediately take measures related to compensation for damages caused by the criminal act; (5) Edit the plan of investigation, including the possible emergence of new versions of the crime.

4. The next stage is characterized by the very process of problem resolution (related to the subject of proof), which is possible due to the significant amount of evidence collected from a variety of sources. In addition, measures should be taken to establish the circumstances of the crime.
5. The final stage takes place the moment the investigator completes the investigation of the collection, examination and evaluation of evidence and the submission of the accusation (together with the criminal case) to the prosecutor. On the substantive side, this stage should include a final assessment of the evidence collected in the criminal case, additional and repeated actions if necessary, and the establishment of a procedure for the termination of pre-trial proceedings.

The second stage of investigation will cause a lot of disputes among the legal community, but at the same time, the authors believe that this approach is justified from the following points of view:

### **Firstly**

It should be taken into account that differentiation of investigation into stages is very conditional and depends on the nature and specificity of the case, i.e. the type of crime which is the basis for classification (for example, the group of terrorist crimes under consideration);

### **Secondly**

The differentiation into stages plays a methodical role, since, on the basis of this, the specificity of methods and a technique of actions of the subjects of investigation is determined. The important aspect of such activity is the organizational provision of solution and investigation of crimes, while the practically significant recommendations in this sphere developed at the initial stage of investigation are the guarantee of efficiency of management and analysis of procedural, operative search information, planning, organization of the investigation. This is particularly relevant when a chain of interrelated crimes such as acts of terrorist attack, hostage-taking, organization and establishment of organized formations is investigated, since, as a rule, pre-trial proceedings and information gathering is interlinked with a number of agencies. It should be taken into account that in the process of organizing an investigation it is important to plan joint procedural and non-procedural actions including such tasks as search for criminals, preparation of instructions affecting the interests of other law enforcement agencies (Isaeva et al., 2015).

### **Thirdly,**

It should be taken into account that, in accordance with Article 149 of the KR Criminal Procedure Code, the basis for initiating pre-trial proceedings is not only statements and reports on the committed crime, but also the direct discovery of circumstances that indicate on the committed crime. This also applies to operative search activity identified by operational services, where the organization of the investigation has its own characteristics that should be taken into account by investigative agencies. At the same time, the planning of investigative activities is

based on close cooperation with the operational workers involved in the conduct of such activities. In addition, the introduction of such an institution as "*special investigative measures*" should also be taken into account.

#### Fourthly

The stages of investigation should be regarded as subsystems of a number of actions (e.g.: inquisitional, control and audit, organizational, operational and investigative, etc.), which are combined with each other in order to resolve the tasks of pre-trial proceedings (e.g., primarily related to the identification of sources of evidentiary and guiding information, their evaluation and use in proving the circumstances established by the KR Criminal Procedure Code). It should be noted that the main distinguishing features of the investigation stages are:

1. The versions that may change during the investigation, the specificity of their construction and verification by the subjects of the investigation;
2. The content and volume of initial information available to investigators at this or that stage of pre-trial proceedings;
3. The basis of the tasks put forward by the investigators, which need to be resolved in the course of the planned activities;
4. The typical investigative situations that are subject to change according to the investigation stage;
5. The priority focus of participants activity of pre-trial proceedings;
6. The effectiveness of the interaction process and its organization in carrying out agreed activities, as well as the production of individual investigative actions performed on behalf of the investigator. The authors believe that it is reasonable to follow the steps we have proposed in dealing with the category of cases in the future.

Today, insufficient attention has been paid to the comprehensive methodology for these types of criminal cases, including the stages of their investigation (Khromykh, 2002; Belyakov, 2003). At the same time, an important aspect is the information and analytical support to the investigation of crimes in general. In order to effectively ensure the solution of crimes, the category of cases under consideration needs to determine the informational picture of the event. It depends on the amount of criminally significant information, because the more such information the investigation agencies have, the more effective the decision on the case will be made. With this approach, it is necessary, first of all, to determine the peculiarities of the structure of the information system and its components, which is subject to change depending on the type and nature of criminal acts. It should be borne in mind that the structural elements of the information and analytical system will depend on the type and form of terrorism, its diversity, methods and manifestations. When analyzing the phenomena under consideration, one can distinguish a set of generalized features that allow carrying out information-analytical systematization in general form. The authors share the position of scientists who refer to the subject area of information management & analysis mainly theoretical provisions of the following scientific knowledge: theory of diagnostics; theory of identification; theoretical constructions of solving situational problems; sections of forensic explosion engineering and forensic ballistics; forensic and operative search principles of their conduct and analysis; theory

of operative search activity; information support of databases and information transfer, etc. Crimes of terrorist nature, it is a multidimensional layer of information that reflects not only the preparatory activities, its commission, concealment and characterization of terrorists, but also contains a set of information relating to financial, economic, political, military and ideological activities that influenced the provision of terrorist actions. It is reasonable that the subject area of the information analysis system includes the theoretical provisions of operative search activity and forensics, because the considered system reflects its "*synthetic, integral*" character, which combines the spectrum of various spheres of natural and technical sciences (Belkin, 1997). In addition, this type of system was created and is considered to be a legal field of knowledge. It is implemented in the field of legal relations, relying on the rules of criminal and criminal procedure legislation, and covers processes and objects of criminal activity related to crimes of a terrorist nature, as well as the activities of subjects of investigation. Tsvetkov (1977) believes that the organization of investigation as a whole contains a complex of organizational methods and means, depending on the specifics of crimes. The right organization creates optimal conditions for the investigation of crimes. It should be noted that Dzhansaraeva (2006), in her monographic research emphasizes that:

*"The most general documentary expression of the crime investigation organization is a personal or approved (collective) plan of its conduct. It is based on the received factual data about the crime and an investigative version as general motivated tactical decisions, provides all necessary investigative actions (operations), defines their tasks and performers, and simulates possible results".*

## CONCLUSION

The research of special literature also confirms the ambiguous approach to the structure of organization of the crime investigation in general as an integral part of forensics. It testifies that the system of the considered part is still at the stage of formation, and also confirms absence of unity in views of scientists concerning sections of forensic science. At the same time, by supporting the opinion of forensic scientists, who are opposed to the traditional system of forensic science and share the view that it is necessary to consider this branch of knowledge as a separate part of it, the authors can express their own vision of its elements. It is reasonable to state the following: the structure of the system of any branch of knowledge should be logically justified, with each of its sections containing structural elements (units) that should not apply to other sections of science, including forensics. According to these approaches, the authors believe that:

### Firstly

The accepted "*four-link*" system of forensic science has lost its internal unity of order, since in the process of its development; new scientific and theoretical directions have emerged. Some of these directions have become acceptable to the traditional system of forensic science. This also applies to the section "*Organization of crime solution and investigation*", which the

authors have highlighted in the research, the subject of which is part of forensics as a whole. This part is differing in its essence and content from the other sections.

## Secondly

Considering the reform of the KR criminal procedure legislation, which has resulted in significant changes in the activities of investigative and inquiry agencies (for example, the refusal of the stage of initiation of criminal proceedings, the introduction of such a new institution as "*special investigative actions*" into the criminal process). There is a need for scientific development and research of problems related to the activities of investigation subjects to verify statements (reports) registered in the Unified Register of Crimes. This is due to the fact that the techniques and methods used at the initial stage cannot be applied to any of the sections of forensics except the new section on "Organization of crime solution and investigation".

## Thirdly

The authors consider the position that "*forensic registration*" cannot be an integral part of the "*forensic technique*" section, as it deals with the means, methods and basic techniques of processing the incoming information, its accumulation and concentration in special registration files for the purpose of subsequent use. This information fell into the scope of investigative and operative search activities of law enforcement agencies for the disclosure and investigation of criminal acts. Therefore, it is reasonable to include this structural element in the section "*Organization of crime investigation and solution*". In addition, the authors believe it is reasonable to consider the forensic science in general as a "five-link" system, while the proposed section "*Organization of crime investigation*" should include such subdivisions as:

1. Construction of general and private versions;
2. Planning of the investigation;
3. Ensuring interaction between the subjects of the investigation;
4. Forensic registration;
5. Mobilization, deployment and use of forces of other law enforcement agencies (necessary for resolving tasks of pre-trial proceedings);
6. Information and computer support for forensic activities;
7. Research of the suspect (accused) identity.

## REFERENCES

- Belkin, R.S. (1997). *Course of forensic science: General theory of forensic science*. Yurist.
- Belyakov, A.A. (2003). *Forensic theory and methodology of detecting and investigating crimes related to explosions*. Thesis of Doctor of Juridical Science.
- Beremkulov, B.O. (2012). *Actual Problems of disclosure, investigation and prevention of false entrepreneurship in the republic of Kazakhstan*. Abstract of the thesis of Candidate of Juridical Sciences.
- Dzhansaraeva, R.E. (2006). *Problems of crime prevention in correctional institutions: monography*. Almaty: Economics.



- Garmaev, Y.P. (2003). *Theoretical bases of formation of forensic methods of crimes investigation*. Thesis of Doctor of Juridical Science.
- Isaeva, K.A. (2013). Use of special knowledge in the form of expertise in the investigation of contract murders with firearms. *Bulletin of Kyrgyz-Russian Slavic University*, 13(5), 38-41.
- Isaeva, K.A., Abdukarimova, N.E., Balymov, E., & Smoilov, S. (2015). Prospects of development of institute of investigative actions at the present stage in Kazakhstan and Kyrgyzstan. *The Social Sciences*, 10(3), 243-248.
- Ishenko, E.P. (2013). *Forensics*. St. Petersburg.
- Khromykh, D.N. (2002). *Methods of investigation of terrorism with the use of explosive devices*. Thesis of Candidate of Juridical Science.
- Kustov, A.M. (2004). Typical model of the crime mechanism is the basis of the private forensic technique. *Forensic Bulletin*, 1(9), 15-18.
- Luzgin, I.M. (1973). *Methodological problems of investigation: Law*.
- Phillipov, A.G. (2008). *Forensic science: Textbook*. Higher education.
- Romanyuk, V.V. (2006). *Investigation of a criminal network (criminal organization)*. Abstract of the thesis of Candidate of Juridical Sciences.
- Trubachev, A.D. (1976). Investigative situations in solving certain types of crimes. In *Investigative situations and solutions of crimes*. Sverdlovsk.
- Tsvetkov, S.I. (1977). *State and prospects of using the management science data in forensics*. Abstract of the thesis of Candidate of Juridical Sciences.
- Zorin, G.A. (2000). *Theoretical bases of forensic science*. Minsk: Amalfeya.