

The usage of information on mechanism of a crime in defense

Abstract: The teaching of mechanism of crime as well as the method of commitment and concealment has to be used in the process of organization and realization of professional defense on criminal matters.

The main conditions and notion of mechanism of crime are considered from the point of view of defense. Scientific and practical recommendations are given below.

Keywords: criminalist information; mechanism of a crime; methods of commitment and concealment; factors; signs, circumstance in proof.

The mechanism of a crime has always been considered to be a professional object of investigation of inspectors, inquirers, operative workers, prosecutors and justices. According to Article 139 of the Criminal Procedural Code of the Republic of Azerbaijan (hereinafter to be referred as CPC) the mechanism of a crime is included in the subject of proving on criminal proceeding which, as we know, is carried out by the Prosecution. Nevertheless, regardless of the will of the legislator, the subject of proving is general for both of the parties of the criminal proceeding which makes it necessary to know the character and features of its main elements (circumstances) in order to carry out professional defense from criminal proceeding.

The mechanism of a crime means complicated dynamic information system which includes subject of the crime, its relation to its acts, to its outcome, to its apprentices, subject of encroachment, the methods of commitment and concealment of the crime, criminal outcome, environment of the crime, behavior and acts of the persons, accidental parties of the case and other conditions. (2, p. 11).

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The system of mechanism of a crime consists of elements (sub-systems) of the methods of commitment of the crime, the way of concealment of the crime, behavior of the subject of the crime, etc.

The doctrine of criminology, criminal law, criminal proceeding, psychology, psychiatry, court medicine, sociology, theory of information and a number of other sciences are used in the study of mechanism of a crime.

The study of mechanism of a crime has a complex character which is defined by complicated structure of mechanism and the fact that in the center of mechanism of a crime stands human being, his acts and inaction on which depend the outcome of the crime in certain conditions.

The main elements of mechanism of a crime which define the character of defense system are the ways of commitment and concealment as well as correlation between them.

Prof. G.G. Zuykov used to define the methods of commitment and concealment of a crime as a system united by single intention of the criminal on preparation, commitment and concealment, determined objective and subjective factors, acts together with the use of appropriate instruments and means. (3, p. 92)

The systematic approach of consideration of method of commitment of crime obligates the defender to select study and evaluate from the point of view of criminalistics its actual elements in order to define and correctly evaluate the event and to refute the incorrect and wrong understanding of the accusing party.

The elements and methods of commitment of crime leave behind certain traces behind which are included in mechanism of a crime. The elements of methods of commitment of the crime are initially studied and evaluated separately, on the basis of finding out and study of traces and other outcome of the acts. Nevertheless, the systematic approach also requires an altogether study.

The systematic approach makes it necessary to study the methods of commitment and concealment of the crime as a union of all these elements with a condition of certain factors. The solution of this task is guaranteed through making

and checking the version about the methods of commitment and concealment of the crime and other methods of defense, which are actually parallel investigation.

The information system of method of a crime, in its turn, being an element of (subsystem) of a more complicated system –mechanism of a crime, has to be investigated in mutual connection with these elements, features characterizing the subject of crime, state, position, etc. Prof. Belkin stated that in this process regularity of forming, choice and realization of method of crime, regularity of happening and development of connection between the elements of mechanism of a crime have to be taken into consideration. (1, p. 363)

The most important regularity, which defines the connection of method with other subsystems, is the regularity of mutual influence of elements of mechanism of a crime. The subject influences the environment by a chosen method, brings its changes into it, interact with the victim, witnesses, whose behavior also influences the criminal and method of his acts.

The regularity of reflection is equally important, due to which the actions that form the method of crime is reflected in the conscience of participants of crime, as well as in material objects and cause changes in outer appearance.

Certain fragments are usually reflected on the subject and instrument of crime (for ex: ground, dust, polish, blood on clothes and shoes, etc)

A fair characteristic of the method can be given only on the basis of study of all traces and reflections defined by the investigation and critically reinterpreted by the defense.

The regularities of reflection arise in each concrete case in accordance with the character of a crime, specialties of its mechanism and methods of commitment. In a certain case it may be regularity of reflection in presence of mechanical interrelation while in other case it is traces of chemical interrelation (as a result of fire or blast) and in another case it may be traces of biological inter-relation (traces of microorganisms on a corpse). The judgment on method, place, time and other circumstances of commitment of a crime is formed by taking into consideration the above.

The interrelation of a method with other elements of mechanism of a crime can be defined and comprehensively illustrated through special criminalist methods. Prof. G.G. Zuykov has brought into criminalistics the notions of “thoroughly structured” and “non-thoroughly structured” methods of crime. The thoroughly structured crime means a method which includes preparation, commitment and concealment of a crime. Such a structure is typical for intentional crimes. The inaccurate and impulsive crimes cannot have a preparation stage which is why they are considered non-thoroughly structured crimes. (3, p. 116-117)

As there is no preparation in road accidents, there is a method, acts which characterize it and forms the content of a crime (arrival) and concealment. (departure from the spot of commitment, taking away the corpse, etc)

The thoroughly structured crimes are typical for robbery of other people’s property, arson, sabotage, intentional assassinations and stealth.

The thoroughly structured crime is a complicated act of a conscious, willed behavior in which elements of knowledge, “automatic” acts are compiled and which are not fixed by conscious and necessary acts, conditioned by the situation, selected on the basis of concrete specialties.

Mr. A, an inhabitant conceives a plan of hijacking a car, prepared picklock, thoroughly followed the owner to see where he usually parks the car, then carried out his plan but eventually had an accident on the road.

All elements of thoroughly structured crime are present in this case (preparation for hijacking, actual hijacking and concealment) stages of formation and realization (emerging of an idea, decision of hijacking on the basis of evaluation of collected information, preparation for hijacking, forming the plan of model of hijacking, realization of this plan and running away from the place of accident with a purpose of concealment from retribution.

The study of the structure of methods shows that its formation and realization are determined by external objective and internal subjective factors. It is necessary to refer to the complete position, all concrete conditions in which the man lives. But this kind of explanation of external factors is too much generalized. The criteria of

limitation of external factors should be their interrelation to selection and realization of method of crime. Taking into consideration the above mentioned factors, the following are those to be referred to external factors which determine the method:

- Social situation and negative phenomenon which influence the formation, distribution and frequency of method of crime. The following are included:

- Social circumstances (historical background) under influence of which the criminal intention and method of a crime is formed

- Household industrial situations which characterize interindividual and more often conflicting interrelation among the members of a group

- Alcoholism, drug addiction as social phenomenon

- Propaganda of cult of cruelty, violence, erotica

- Distribution of literature, video and films with detailed methods of commitment of grave crimes

- Professional criminality as a source of criminal experience

The factors directly connected with preparation, commitment and concealment of a certain crime should also be included in external objective factors which determine the method of crime. Such factors are:

- The subject of encroachment, its specialties

- The settings preceding the crime defined after the commitment of a crime. Such settings consists of: place, time, weather conditions, visibility, availability and character of communications, means of messaging, connections, layout of buildings in the area of the place of commitment, distance, special signs of surroundings

- The character of an object on which crime has been committed, its functional mark (an enterprise, a shop, storage, base, residential building, apartment, railway, other types of transport and objects)

- Presence (or absence) of third parties at the place of commitment of crime (witness, apprentice, victim) their relation to the crime

The subjective factors include:

- Purpose and motive of a crime. A purpose is an ideal imagination of a person about the final results of his acts. A motive is psychological intention to act. The method of preparation, commitment and concealment of a certain act depend on purpose and motive. They determine the intention of brain, which in its turn influences the physiological mechanism of actions expressed in the method of crime.

- The mental characteristics of a personality on which depend the evaluation of external factors, having a decision and specialties of its realization. The mental features are reflected in the character of a person, in his attitude towards the reality, features of his will, (strong will and weak will) ability to consciously direct his activity towards achievement of a purpose and realization of motives. Thus, character becomes basics of one's behavior.

From the point of view of a method of commitment of a crime, it is necessary to select the following in the character:

- Will, in other words – ability to choose the purpose of activity and realization of this purpose through internal conditions. The important thing about the willed act is understanding of importance of purposeful acts and their results for a subject (or a society)

- Temperament, i.e. characteristics of a personality from the side of dynamic specialties of a mental act – tempo, rhythm, frequency, emotionality

- Emotions, i.e. subjective reactions of a person to the influence of internal and external irritators, which are expressed in satisfaction, dissatisfaction, joy, fear, etc. The emotions are also reflected in the method of crimes. For instance, people destroy the traces of crimes under the influence of fear or feel satisfaction torturing the victims, etc.

- The signs of teaching and behavior (i.e. automatized elements like writing skills, driving skills and commitment of other labour operations) formed under the influence of psychological factors play an important role in the method of commitment of a crime. The skills are individual, they are relatively strong for a long period, they can vary under the influence of a situation, and they can be fixed with the help of criminalistical means and methods as they are reflected in environment as

a result of actions of a person. The traces of these crimes carry signs of skills and accordingly information about the person who has these skills.

The habits are closely connected with skills. These habits release not only techniques of committing the acts from the control of conscious, but also the fact of actions itself. The habits are individual just like skills, which makes the traces more important as these traces reflect the habits. Under the influence of habits distribution of functions can be determined in a criminal group, time, place of commitment of a crime, application of professionally used instruments. Addition to alcohol or drugs is also reflected in the method of crime. (2, p. 66)

Mental abnormalities, i.e. deviation of mentality, which do not exclude consciousness and responsibility for actions (psychopaths, intellectual underdevelopment, cruelty, sadism, masochism, exhibitionism, sexual fetishism) often determine the method of a crime. The actions of psychopaths are usually bold, sometimes with visual lack of motives, especially cruel, inconsecutive, with nearly equal periods and other signs.

- Gender, age, somatic features of a person, height, weight, physical strength, constitution, development of body parts
- Health condition, specialties of development of a body
- Specialties of the profession of a person
- Education and level of intellectual development, erudition, interests, their depth and variety, other subjective features of a person, his individual characteristics (5, p. 76)

There is an interrelation between the objective and subjective factors which determine the method of a crime. It would be wrong to overestimate only the role of objective or subjective factors. Their influence to the method of a crime is individual in each case. (6, p. 28-29)

While committing certain crimes, the methods are repeated which is explained by some criminalists as coincidence of objective factors, external circumstances in which the criminal acts. (7, p. 288-292)

Thorough and all-sided research of frequency of methods has been conducted by G.G. Zuykov. He came to the following conclusion: the frequency of a method is not just determined by the frequency of external factors, but by the sum of factors that determine it which includes objective and subjective factors. Caused by this condition, the frequency of a method should be studied as a strong tendency, which has character of regularity. The frequency of a method has a situational character. As the situations in life, in which the same type of crimes are committed by the same person, are dynamic, they can also change under the influence of accidental circumstances. The consideration of such circumstances and the changes that are connected with them determine the behavior of a person: change of a method, change of intention to commit a crime, attraction of accomplices, destroy of instruments of crime or their modernization and other decisions. (3, p. 201)

At the same time, the frequency of a method should not be considered by excluding its evaluation. From the point of view of the court, (which gives final legal evaluation of the act) it is necessary for the defense to indicate the frequency of a method or its absence in the series of crimes committed by the accused person which obligate to qualify the act. Such sign may be like same type of breaking into storage, use of same type of instruments of crime, same type of fake financial documents, taking out the stolen property by the same method, etc (9 p. 99)

It is imagined that the person himself evaluates the frequency of a method from the point of view of its results, safety, and comfort of realization. The model in his mind guarantees this method. The thought model of a method plays the most important role in its frequency. Unfavorable situations bring certain correction to the model. Unfavorable conditions may make the model more exact and favorable conditions may fix the model.

The issue of forms of frequency of methods is also important for the defense. Among them are:

- The forms of frequency: The same type of commitment of crimes is characteristic for these forms. Their mechanism include means having only born signs

- The forms of frequency of same type of crimes: visual specialty of a method
- The forms of frequency of crimes in which individual signs of a subject are fixed (4, p. 100-101)

The same repeated signs can be observed in serial crimes of the same type. These signs let build a version about the commitment of the crimes by the same person (signs of the same instrument used for breaking the lock of the storage, sign of analogical explosive device, signs of the same protector, etc)

Almost every crime is committed with a calculation of concealing it from the justice and thus escaping the punishment.

The typical methods of concealment are:

- Concealing the information. The content of this method is keeping people unaware about the circumstances of crime and source of information as well as running away from the place of commitment of a crime.

- Full or partly destroying of material evidences, instruments of crime, traces and other proofs.

- Masking of certain objects with a purpose of changing their initial position, external appearance.

- Falsification, i.e. faking the objects, establishment of wrong information.

- Mixed methods which include dramatization, simulation, etc. (1, p. 366 - 370)

The methods of concealment like masking the appearance, hiding the instrument of crime, various falsifications, and preparation of fake alibi are often used before the commitment of a crime. The methods of destroying the evidences, hiding, dramatization of other event are used after the commitment of a crime. The verbal methods of concealment are usually used after the criminal case has been filed: influence the witnesses and victims, bribery of victims, false witnessing, refuse to witness.

The criminals rarely try to destroy the evidences during the period of investigation. There have been cases when the protocols of inquiry of an accuse person have been destroyed, the accused person has attempted to commit suicide, liquidating the witnesses, etc. But these methods are not frequent.

The methods of concealment that happen more often is quite frequent. The acts of concealment leave traces. If we study them properly we can build the defense well. The character of traces of concealment, in its turn, depends on external factors like climatic conditions.

The choice and realization of methods of concealment are conditioned by the same objective and subjective factors, under the influence of which the method of commitment of a crime is determined. Nevertheless, there are some additional factors which are used after the commitment of a crime, during the period of investigation. These are: awareness of a person about the filing of a criminal case, the character of chosen restraint in relation with a person violating the law, character of outcome of a crime, tactics of investigational acts, the attitude of the victim towards the investigation, personal interest in the case, etc.

It is important to take into consideration the fact that it is the sum of all these factors that influence each other.

The factors that determine the concealment have to be differentiated in regards with the personality of the accused person, the victim and the witness. The system of these factors will be specific for each of them.

The factors that influence the concealment also have situational character; they are closely connected with the criminal situation, i.e. situation that appears in the period of commitment of a crime as well as the situation in the period of investigation.

The criminalistic information about the method of commitment and concealment of a crime is used by the defense in various directions. The most important direction is search of the circumstances which would justify the person. The sign that show the method of a crime let the defense to bring up their counter arguments. It should be taken into consideration that there can be a complex of sign for each criminal situation. The sum of these signs let the defense build the version on the gender, age, skills, physical development of a subject, abnormalities of body, time of stay at the place of commitment of a crime, knowledge on life, household, position of property of the victims, etc. (8, p. 99)

Apart from that, information about the method of commitment of a crime are important for determination the tactics of participation of a defender in investigational acts. (Mainly, tactics of examination, witnessing, search, investigational experiment, interrogation, presentation for identification).

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