

Fixation issues of criminalistically significant information

Abstract: It is determined the elements of a fixation's system of criminalistical information and their interrelation with elements of a system of detection and selection of criminalistical information.

Conditions, order and subjects of informational flows' fixation is regulated by the law. Results of fixation, its order and techniques of using should be covered in form, determined with the law.

An interpretation, i.e. describing of informational flows, has a special place in determination of reliability and correctness of informational flows' fixation.

It is analyzed the provisions of CPC of Azerbaijan Republic in respect of seizure of the samples for examination and their methodological significance in investigation of crimes.

Keywords: fixation; criminalistical information; elements of fixation system; fixation of informational flows; written, audio, graphic, combined forms of fixation; fixation methods; ways of fixation.

Fixation of criminalistical information is a system of the actions on transmission of informational flow from one medium to other. Its actuality and practical significance is explained with importance, which has fixation of the evidences in process of proving.

The following are the elements of fixation system of criminalistical information: 1) sources of criminalistical information's flows; 2) mediums of criminalistical information; 3) condition of fixation; 4) action on fixation; 5)

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instruments and ways of fixation; 6) subject of fixation. The elements of fixation system of criminalistical

information are on interrelation with the elements of a system of detection and selection of informational flows, some of the elements are common for all systems.

The flows of criminalistical information (informational flows) subjecting to fixation might be conditionally subdivided into main and secondary. To the latter are related the flows of information received in result of conducting of operational searching measures of inquiry bodies, organizational and searching actions of an investigator, studying by him special literature, consultations with specialists etc. [6, p. 161].

Terms, order and subjects of fixation of informational flows are regulated with the law, providing a certain form, in which should be covered fixation results, its order, techniques and usage.

Among the circumstances determining reliability and correctness of fixation of informational flows interpretation has special place. Under interpretation is understood a description of informational processes provided with number of factors: a) written; b) audio; c) graphical; d) subject; e) figurative; f) combined [11, p. 78].

Written form of fixation of informational flows is an independent one, another are applied only with combination with it, which connected with the forms of evidence fixation providing with criminal procedure law. Written form of fixation of informational flows is concluded in records making, in which are described informational processes, elements of their systems. Written form of informational flows fixation is most distributed that determined by diversity of information, which might be fixed only with verbal description and position a lawmaker who authorizes to make the records of investigative and other actions.

Audio and figurative forms of informational flows fixation associated with technical instruments of fixation of a voice (audio record) and imagines (photo, filming, and video record).

Graphical form of informational flows fixation is concluded in registering of criminalistical information through sketching of the objects or execution of graphical signs explaining fixing information. Drawings, schemes, graphics etc. are the material expression of this form of informational flows fixation [11, p. 116].

Subject form of informational flows fixation is a conservation of mediums of information or its integral parts.

Combined form of informational flows fixation is a combination of the listed forms, from which only the written is an independent one. So, a questioning with usage of video recorder is a sample of combined form of informational flows fixation. Here it is combined written, audio and figurative forms of informational flows fixation, and upon designing by interrogator the schemes is used a graphical form of informational flows fixation.

Main methods of informational flows fixation are description, copying and modeling. Perspectives of their development linked with development of technical devices and techniques of criminalistical information fixation and extension of a circle its admissible mediums [12, p. 61].

Description is an indication of the signs of criminalistical information. The description may be full and selective, direct and mediate. Under the direct is understood the description conducted by a subject for expression of the results mediate perception of information and application of other methods of informational flows fixation. Under the mediate is understood the description conducted by a subject of fixation for expression of information's signs perceived by other persons. Copying is a reception of information medium reflection, in result of which is appeared a new medium of informational flows. Modeling is a creation of informational flow source model. Reconstruction is a variety of modeling [8, p. 72].

Let's consider in details the issues of criminalistical information fixation.

There are distinguished three forms of evidences' fixation in criminal procedure science: records making, attaching other documents to a case and attaching material evidences to a case.

In the context of these forms are spoken about main and additional, mandatory or optional ways of fixation. Under main way of fixation is understood a recording, and as additional one is called photography, receiving the casts and prints of the traces. R.S. Belkin believes that such division proceeds from wrong imagination that the results of application other, beside recording, procedural ways of fixation do not get importance of evidences' sources [2, p. 134]. This point of view is considered to be right.

So, followers of recognition of a record as the main form or way of evidences' fixation establish this that recording is the universal way of fixation. Polemicizing with E.E. Podgolin on this matter, I.V. Makarov pointed out that "if to analyze the fixation methods from point of capabilities of variety fixation of objects features, accuracy, quickness and universal nature of register then a division the methods into main and additional would be also inconsistent". So, recording cannot be main method of fixation under registering of audio signs of verbal speech. Due to selective nature of recording description it, e.g. concedes to video record and filming in quickness, accuracy and universality of registering of investigative experiment or scene of incident, in technical capabilities of fixation of actions, processes and dynamic states, and also some weakly visible or invisible signs [13; 10, p. 85].

According to R.S. Belkin, there is a sense from procedural point of view to divide the way of evidences' fixation into the mandatory (e.g. recording), i.e. imperatively indicated by the law, and optional, application of which depend on discretion of an investigator and court, as other classification will not be had procedural nature [2, p. 134-135].

It seems to be interesting an analysis of informational processes under application of this or that form of fixation of criminalistical information.

Under verbal form of fixation of criminalistical information, containing in verbal information, transforming of the form of informational signal from acoustic into a graphic carried out through recording. There conducted through re-coding of signal [16, p. 61-62].

Re-coding of criminalistical information under the verbal form of fixation is implemented when this information is contained in subject expression of it. The recording might be carried out few times until it takes a written form. The first, informational signal is re-coded into one of the signs system, e.g. in digital, like result of the features' expression of this subject in indicators of measuring devices, and later in other system of the signs – writing of a record. Probability of losses and distortion of information is increased accordingly to a number of re-coding. Application of both verbal and other fixation forms reduces these losses and distortion of information under recording at the expense of increasing the numbers of forms of informational signals' expression [12, p. 11-14].

Under graphical form of fixation the informational signal is re-coded in a system of geometrical figures, accepted marks and conditional signs. Subject form of fixation presupposes either transfer of criminalistical information from origin to a model or saving the data array of criminalistical information without re-coding of it when attaching a thing in nature to a case. The last form of criminalistical information fixation is more preferable than modeling of evidential signs of a subject, under which is lost and distorted a part of information.

As known, attaching a thing in nature is not always possible or reasonable, and therefore for fixation of criminalistical information one needs to use another forms of informational signals expression, which have criminalistical significance [18, p. 98].

Technical instruments of fixation of criminalistical information are divided, as rule, in the following groups:

- Instruments of verbal information fixation (instruments of the records making, voice recorder devices);

- Instruments of creation of ideal models – plans, drawings, pictures and schemes;

- Instruments of creation of material models (instruments of conservation, plaster casts, photo-film-video devices, complexes for creation of synthetic portraits and others).

As it noted, in base of recording is lain a description as a method of fixation of criminalistical information.

R.S. Belkin offered to distinguish the direct and mediate description. Under the direct was understood such description, which a subject of proving had carried out for expression of the results of direct observation or measurement. This description might be carried out as in process of observance or measurement, and in context of testimonies fixation – in process of their receiving (accompanying description), so and after them, on the results of investigative actions, which fixed in memory of investigator (subsequent description) [2, p. 138-140].

Accompanying description is distinguished with more accuracy than the subsequent one as it coincides practically with time of perception of described object or phenomenon. Under this a description might be completed when all necessary signs of an object or phenomenon are fixed at once, and fragmented when at time of perception are fixed only the most important signs of described, and completed description is carried out later. Fragmented description is an interim form, which combine accompanying and subsequent descriptions. The latter is always less completed and accuracy. Its defects are determined with influence a number of psychological factors relating to the processes of remembering and reproduction.

Other form of description is mediate description. It is also carried out by an investigator in process of proving, but its content is an indication of the objects and phenomena, which perceived not by investigators and other persons: by witnesses, suspected persons and others. For subsequent direct and other mediate description fixed signs of description's object should be reproduced otherwise they will not be accessible for description. Under subsequent mediate description such reproduction

has mental, as rule, imaginative nature. Investigator mentally imagines the signs of described object and fixes them. Under mediate description there is no enough only mentally imagination. Mentally image of an object appears not to an investigator, and to other person. Criminalistical information containing in this image should be transmitted with information source to an investigator for carrying out description.

R.S. Belkin justly notes that it appears one more level between reproduced in mind an image and description of an object – transmission of information. Transmission of criminalistical information from a source to an investigator might be implemented in form of audio expression of cogitative image of an object that is subjected to description, its graphical expression and recognition of fixed in mind of the object or indication on similar object [2, p. 138].

Completeness and accuracy of description under speech expression by the source of criminalistical information of cogitative image of described object depends not only on the processes of remembering and reproduction, but also on such factors like depth of the object cognition, its assignment, and signs; level of the speech culture of subject, volume and variety of his/her vocabulary, figurativeness and accuracy of the speech formulations; thinking discipline of the subject, ability to separate of reproduced in mind from the conclusions of it.

In case of difficult to express with speech of figurative image of the object description or in addition to it the source of criminalistical information can in own initiative or an investigator's suggestion to use graphical expression of this object. Under impossibility or insufficiency of verbal or graphical transmission of criminalistical information, the description might be conducted with help of the instrument like recognition of fixed object under perception of the object in nature or its image (identification); like instruction into similar object having the same signs that described one.

In addition, R.S. Belkin distinguishes the two description systems named accordingly an ordered or systematized description and non-ordered or arbitrary one. Under non-ordered description the subjects' signs are indicated in certain order, a circle of these signs is determined in advance, speech form of their

expressions is standardized. Under non-ordered description the sequence and circle of described signs are defined arbitrary, a form of their speech expression is not regulated.

According to R.S. Belkin, the variety of arbitrary description as follows:

a) Description, which carried out in arbitrary sequence and with arbitrary choice of indicated signs, but with usage of terminology standard;

b) Description, under which the circle of mandatory indicated signs under arbitrary sequence of their description and non-order of applied terminology seems to be mandatory;

c) Description conducted in certain, standard sequence with arbitrary choice of indicated signs and arbitrary terminology.

Further, some corrections this classifications and determination of its elements was made by V.V. Kirichenko. He offered to call the description, in which regulated, if, one of the elements, non-arbitrary, and partly ordered [4, p. 20].

Way of expression of the criminalistical information about described object is presented like description technique. From this point of view, there are distinguished three description's techniques: speech transmission of criminalistical information on the subject, or verbal description; graphical transmission of criminalistical information – graphic description; transmission of transformed or shorted criminalistical information – coding description.

Verbal and graphical description creates some inconveniences for operational usage of criminalistical information that containing in them. Therefore there has appeared necessity to transform these descriptions in order to express criminalistical information in short way, to squash it indicating with conditional symbols or code. So, it appeared coding description adapted to transmission the criminalistical information in short time to long distance, descriptions' classification on their conditional marks – code. It seems coding can be done only ordered description, when each indicated sign, a circle of which determined in advance and character regulated, receives its conditional expression.

Under recording the description obtains the expression in written. Since a record is the procedural document, the law places to its content and process of making some requirements, violation of which might be caused a loss of legal effect as a source of evidence or instrument of the facts justification.

Graphical form of fixation is concluded in imprinting of criminalistical information through sketching of the subjects or fulfillment of graphic signs, expressing fixed information. The material expression of this form is pictures, drawings, plans, schemes, charts, maps and others.

Sketching as a fixation technique historically had been preceded to application of the technical instruments in these purposes (photo and filming, plaster cast substances). Sketching of the traces and other material evidences was widely used that time, when there were no other opportunities to express in nature a fixation object in order to give imaginative idea of it and those elements, which were difficult and sometimes impossible to describe accurately in the protocol. Development of the instruments and techniques of the visual figurative forms of fixation of the criminalistical information moved to the background as at first, it could not be compared with them on quickness, accuracy and expression of an image object, and the second, in the context of difficulty of sketching, e.g. a corpse, it required presence of special skills of drawing. Currently, sketching is often fulfilled in the situations, when on some reasons the technical instruments of fixation of objects' external view is not presented to be possible.

Making of the schemes and plans is the common technique of graphical form of criminalistical information fixation. The schemes and plans might be produced as a person transmitting the criminalistical information to a subject of proving (witness, victim, accused person, expert and others), so and the subject of proving himself under mediate or direct description. There are distinguished the following varieties of the schemes and plans compiled under direct description:

a) schemes and plans fixing the situation of place an investigative actions' production: inspection of occurrence place, investigative experiment, search and others;

b) schemes and plans fixing location of the technical instruments of criminalistical information fixation under production of investigative actions if it has evidential significance or it is necessary for evaluation of fixed criminalistical information [15, p. 17-21].

As it noted, under fixation of criminalistical information in objective form is applied such techniques like seizure of an object in nature, and also reconstruction (including modeling), copying, receiving of the plaster cases and prints, i.e. producing of material models.

According to R.S. Belkin, in most cases a seizure of object in nature is preferable technique of fixation [2, p. 142]. But, this idea is not recognized by everyone, and some authors do not consider the seizure of material objects as fixation technique of criminalistical information. A.N. Basalayev writes that seizure of the material evidences, packaging and attaching them to a case is not a fixation [1, p. 7]. He is supported by E.B. Palskis, who does not recognizes a seizure of the object as fixation technique of material evidences as in this case is absent such sign of fixation like re-coding of informational signal into available form for investigator and court [12, p. 65-68].

Main goal of criminalistical information fixation is its saving for participants of process, and the first, for the investigator and court. Since attaching to the case is an instrument its saving then this attachment, and consequently, preceding to seizure, which make possible the act of attachment, might be considered as fixation technique. The same position is supported by number of scientists-specialists in procedures. So, for example, A.M. Larin calls attachment of the material evidences to a case one of the procedural forms of information fixation like attachment other documents to the case [7, p. 48].

R.S. Belkin believes that seizure of the object in nature with the next of its conservation is preferable technique of subject fixation at the following grounds:

a) This technique leads to minimum the losses of criminalistical information, which are inevitable under copying, receiving of the plaster casts and application other fixation techniques;

b) It is provided an opportunity of the direct perception of seized item by all participants of process that excludes doubts, which can be appeared under perception of the objects derivative from it;

c) It is created conditions for more complete investigation of criminalistical information, which contain in the object;

d) There is kept an opportunity to receive the copies of item if, certainly, a nature of the item allows its multiple copying [2, p. 154].

Other techniques of the object form of criminalistical information fixation based on modeling method. Objective modeling of man's appearance and reconstruction calls especial interest.

Object modeling of man's appearance like fixation technique might be similar to above described technique of the graphical fixation form, when appearance of man is recreated through drawing thought image. Difference here is only in modeling instruments: in considered case we are talking about creation of synthetic portraits with using of special technical devices. Object modeling of man's appearance is possible through recreated imagination, which is based on material object like it is happened under plastic reconstruction of a face on skull.

According to R.S. Belkin, fixation of information is occurred at all cases of object modeling of man's appearance, but not always this information has criminalistical nature. If sketching a portrait is produced by interrogator himself during questioning and like any similar object is attached to a record, then information contained in it and received with procedural way may have criminalistical significance. Portraits, which produced by a painter or with help of special technical devices during procedure not provided with procedural law, are instrument of fixation orienting information, but not criminalistical one [2, p. 157].

In view of I.M. Luzgin, reconstruction is a recreation of initial state of situation or separate object or its individual signs in order to solve investigation objectives [9, p. 167]. Detailing this definition, M.V. Saltevsky presented the criminalistical reconstruction like a process of re-creation of essential, in point of investigation issues, signs of missing or changing object (original), which

associated with investigated event on description, images or material rests. As result there is obtained material object, which is similar to original. It is become a source of criminalistical information and is used instead of original under conducting of investigative actions or forensic expert examinations [14, p. 77-79].

In this case we are talking about reconstruction as condition or accepting of investigative action conducting, when an object is re-created by investigator or on his instruction by other person on fixed criminalistical information. This reconstruction has no a role of accepting of objective fixation of criminalistical information as this role is done with it only when the object is reconstructed under direct participation of a source of criminalistical information and on the basis of this information, which is received in process of reconstruction.

The law distinguishes specific category of the objects among the objects of forensic expert examination, which in theory and practice have called the samples for comparative researching.

According to article 273 of the CPC of Azerbaijan Republic, the following cases are the terms of samples seizure for investigation:

- if the samples reflect the features of human corpse or animal remains, and also item or substance;
- if the samples have significance for criminal prosecution.

Samples for investigation might be also seized in course of inspection, searching, seizure, property or correspondence arrest, which conducted in compliance with the provisions of the CPC.

In case of need, the samples for investigation might be seized by an expert also, under condition not violating the rights other persons.

Under the article 274 of the CPC, the following samples can be seized for investigation: blood, sperm, hairs, nail clippings, microscopic scrapings of body skin; saliva, sweat and other bodily excretions; prints of the skin pattern, casts of teeth and limbs; manuscripts, knots, items and other materials, which reflect human skills; voice phonograms; tests of materials, substances, raw materials and ready products; arms, bullets, cartridges; other substances and items.

Seizure of the samples for investigation is fulfilled on decision and is made a record about seizure.

On unclear ground the CPC of Azerbaijan Republic only an investigator and expert have the right to seize the samples.

Sample is, first of all, material object. Comparative investigation in process of expert examination presupposes, as mandatory condition, availability of the material objects comparison, the signs of which might be perceived not only by expert, but also other participants of the process, objects accessible for perception, analysis and evaluation by each of the participants. Therefore, ideal image of the object, which is kept in mind of a witness or victim and compared by him/her with presented for identification material object, is not a sample. This image is inaccessible for other observer [17, p. 111].

Dependence on contained criminalistical information, the samples are subdivided into the two groups: 1) reflecting fixed signs other object and 2) the samples reflecting its own signs [3, p. 77-79].

The first group of the samples is mostly used in criminalistical identification expert examination. Fixity of the reflection, the carriers of which they are, means relative stability of it, its fixation in this object. Duration of fixation has to provide an opportunity of comparison process, to be in its duration not less than length of the process, and practically to provide an opportunity of such comparison at any time of production on this case.

These samples play a role of identifying objects in process of criminalistical identification. Being fixed reflection other object's signs, they serve to the purposes of its identification, its selection from variety of similar objectives, which did not leave their signs in the sample, have no causative ties to it. Though in process of identification the sample play only the role of connecting link helping to establish dependence between the main objects of identification: identified object and those identifying object, origin's establishment of which from identified object is a task of an expert examination. Determining sign of this group's samples is obviousness their origin from identified object. Process of these samples receiving

from informational view presents the process of transmission of criminalistical information from a source – identified object – and fixation it in a form of the materially fixed mapping. Under this, re-coding is not occurred, it continues to exist in the past coded form [5, p. 92].

The second group's samples present an interest for investigation from point of their own signs. These objects are not the result of interaction to identified object and typically serve for establishing of resemblance of investigated objects to them. Under receiving such samples, a process of transmission and fixation of transmitted criminalistical information does not occur, therefore there cannot be considered their receiving like an acceptance of the object fixation of criminalistical information. Information about the fact and process of their receiving is fixed, like under receiving the first group samples, in verbal form – in a record of the samples receiving. Fixation of criminalistical information, which is contained in the samples of second group, will be place not in procedural, and in purely technical aspect – like a measure on saving of the objects in that form, which provides extraction of necessary information from them.

Thus, we have considered the issues of fixation of criminalistical information, accenting attention on their methodological significance in investigation of crimes.

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