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General characteristic of easel crimes

Abstract: There is researched a content and suggested the definition of the easel crime, the notion of which is absent in legal literature.

Easel crime is a lawfulness criminal prosecution of particular persons or legal entities on obviously feigned socially dangerous act (crime) through falsification of reasons and grounds to institution of criminal case, its production, evidences and results.

It is noted necessity to include in an object of proving of a case an establishment (checking) of presence or absence of the elements of an easel crime and formation of criminalistical characteristic of the easel crimes.

Keywords: easel crime; model of illegal actions; intention; motive; purpose; criminalistical characteristic; an object of proving.

Easel crime is illegal criminal prosecution of particular persons or legal entities on obviously feigned socially dangerous act (crime) through falsification of reasons and grounds to instituting of criminal case, its production, evidences and results.

By analogy with the easel art, the easel crimes are a fruit of imagination its performers (authors), based on knowledge on being and consciousness, which are interpreted on the easels (basements and rooms) with considering of received orders and actually are not corresponded to reality, not existed.

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Easel crime is an artificial model of illegal acts that are not committed in reality, but presented in procedural documents as, ostensibly actually, occurred events.

Last time the easel crimes became to develop in many countries over the world, including those, which pretended to be democratic ones [3, p. 78-98].

Easel crime can be committed absolutely only with direct intention: being committed it, perpetrators are aware that they begin and carry out illegal criminal prosecution, in the basis of falsified reasons and grounds to institutions of criminal case through forgery of documents, evidences targeted to violation of rights and freedoms of person either legal entity and his representatives.

Motives and aims of the easel crime can be various. These are revenge or greed, career incentives etc., either a set of subjective motivations occurring from each other [6, p. 114-118].

As rule, easel crime consists on a set of socially dangerous acts that recognize by criminal law as crimes against justice, state power, interests of public service etc. They are impeding to implementation of justice, production of preliminary investigation and administration of justice (Article 286 of the Criminal Code of Azerbaijan Republic, hereinafter the CC), bringing of obviously innocent to a criminal liability (Article 290 of the CC), illegal arrest, imprisonment or holding in custody (Article 292 of the CC), compulsion of evidence (Article 293 of the CC), falsification of proofs (Article 294 of the CC), adjudging of obviously illegal sentence, decision, determination or findings (Article 295 of the CC), obviously false denunciation (Article 296 of the CC), obviously false testimonies, conclusions of expert or wrong translation (Article 297 of the CC), subornation or compulsion to evasion from testifying, obviously false testimonies or conclusion either refusal to give testimonies (Article 299 of the CC), infringement of the legislation on operative - search activity (Article 302 of the CC), abusing official



powers or excess of official powers (Articles 308-309 of the CC), service forgery (Article 313 of the CC), negligence (Article 314 of the CC) and others.

If take into account that maximal punishment for indicated crimes is eight years, then it seems necessary to introduce in the CC the Article “Illegal criminal prosecution” and with provision for qualified circumstances (organization, incitement, severe consequences and others) to provide on it maximal term of imprisonment that is assigned on cumulative crimes. This is a part of preliminary resume on the ways of fight against easel crime.

In our research we need to be based on the provisions of criminal procedural legislation of Azerbaijan Republic with all its contradictions, errors and alogisms. According to Article 7.0.4 of Code of Criminal Procedure (herein after, the CCP) of Azerbaijan Republic, criminal prosecution is criminal procedure designed to establish the criminal act, incriminate the person who committed the offence provided by criminal law, charge that person, pursue that charge in court, sentence the offender and carry out coercive procedural measures where necessary [7, p. 6].

Consequently, illegal criminal prosecution is unlawful conducting all kinds of activities that included by law in its criminal procedural notion.

Accordingly, it makes a conclusion that all representatives of the bodies carrying out criminal process – bodies of inquiry, investigation, prosecutor’s office and courts, which fulfill criminal prosecution on the criminal case, automatically become the participants of illegal criminal prosecution.

Either is it possible that some employees of criminal process’ bodies take part in illegal criminal prosecution being not aware criminal nature of their actions?

May it be that investigators, prosecutors and judges do not know on falsification of reasons and grounds for institution of a case by employees of inquiry body and do not guess about that, and forced to continue the began unlawful criminal prosecution in their easels as mechanical executors?



Let's imagine the situation, when investigator receives from his chief or a chief of inquiry subdivision the material concerning detecting in a pocket of some citizen N ten gram of heroin and about one kilo of heroin in his home with instruction on urgent institution of case. The case-file includes a proper drawn up protocols that have been confirmed with dozens of signatures, expert reports, documents on conducting operational measures, notification letters submitted to court and prosecutor (Article 445.2 of the CCP), explanations and even confession of guilt of citizen N and other documents.

Being received a formal consent of prosecutor, an investigator, as rule, begins his investigation from questioning of citizen N, who might be also detained by inquiry body in order of Article 148.4 of the CCP.

It is well if in the first interrogation citizen N states on innocence and his illegal criminal prosecution. Though, there are cases, when under pain of tortures he forced to sign a questioning record that re-written from explanation, and he says on his innocence in court only.

What must investigator do who receives a statement on innocence and falsification of the reasons and grounds for institution of the case?

True. The investigator is obliged to check carefully the statement. The law provides his with opportunity to conduct interrogation the persons, who signed the records (it is permitted by the law not for prosecution purposes. Art. 134.5 of the CCP), and also to produce confrontations, examination of documents etc. dependence on his experience, skills, honesty and decency. But, God forbid his to show excessive activity, because after that there will be a screaming in all countries and all levels about an investigator's intention to break up the case and even will be said the concrete sum taken for that.

It would be more complicated if on commission of an easel crime is said first time in court only.



However, let's speak one at a time. From foregoing we may do initial conclusion that investigation of the easel crime is begun from receiving the first information about that whether the statements of witness, suspected, accused person, their relatives, comrades, co-workers etc.

But, despite that an investigator, in compliance with his experience and knowledge of the reality, checks the easel nature of received materials (information) on crime, is obliged to prove their reliability. Dependence on number circumstances (place of investigation, subordination etc.) investigation will be a formal, turned out notarial confirmation of the materials of inquiry. But upon obvious blunders and breaches it will get a character of investigation of easel crimes. There are known in practice such cases and it is not important whether they determined by adherence to principle of investigator or fare for consequence of his participation in unlawful acts [2].

Well then, the fate of people depends on "professionalism" of easel operators, decency, honesty and adherence to principle of investigators, prosecutors and judges and it is necessary that the second part of this assertion will overcome, prevail over the first one.

Juridical literature dedicated to the methodology of investigation that or other kind of crime as one of the main elements are listed the circumstances, which are subjected to establishing under investigation of this kind of crimes [1, p. 680-690; 4, p. 357-363]. This issue is resolved in compliance with requirements of Articles 62, 63 of the CCP and Articles 36, 37 of Criminal Code, which determine a subject of proving on each criminal case. Common provisions of these articles are concretized and supplemented with regards to this kind of crimes. The list of such typical circumstances to be proved is developed on each kind of criminally punished acts. But, it cannot predict exhausted list those circumstances, which should be cleared in each specific case. Therefore, an investigator's task is with considering of recommendations of the methodology to make clear those



circumstances, which characterize the criminal case. This part of methodology is also given a characteristic of the circumstances, which are subject to prove, description of typical ways of crimes' commission, their concealment and often frequent reasons and conditions that cause to illegal act [5, p. 470-473].

There are also determined reasons and grounds, under presence of which might be made a decision to institute criminal case, suggested a more typical set of versions for this kind of crimes, given recommendations on planning of investigation depending on the grounds of institution of criminal case. Circle and sequence of initial investigative actions and operational measures are determined depending on particularities of specific criminal case and investigatory situation. It is established grounds to institute criminal case and also primary data for bringing of versions and investigation planning, produced detection, fixation and seizure of evidences. Through initial investigative actions and operational measures are carried out search and detention of criminal, prevention and suppression of crimes. Generalizing investigatory practice, methodology recommends a list and consequence of initial investigative actions that are more typical for this kind of crimes.

Recommendations of the methodology based on scientific generalization of new experience of crimes' investigation. These recommendations are model that depend on specific situation, in which investigation is conducted.

In tactics of forthcoming investigative actions and operational measures, which are necessary for comprehensive, complete and objective investigation of circumstances of criminal case, is drawn attention to development of the methodology of usage of scientific technical means, tactics of assignment of forensic expert examinations and determination of approximate circle of questions, which might be submitted to expert's resolution. Here are given the recommendations on issues of usage with aid of specialists and public during investigation's production.



In respect to criminalistical characteristic in methodology of investigation of separate kinds and groups of crimes then it presents a system of information concerning investigated crime that has criminal legal and procedural meaning. In content of this term are included the components similar to the circumstances of proving subject: a way of preparation and commission of crime, direct object of criminal trespass, conditions of its guarding of trespass, an identity of subject of crime, masking hidden criminal act and others [4, p. 365-366].

Certain similarity of circumstances of criminalistical characteristic with circumstances of proving subject does not testify that the latter is included entirely or partly in set of criminalistical characteristic, are its constituent components. The fact that should be proven in course of investigation are the circumstances characterizing a place, time, way and other sides of investigated crime and constituting a subject of proving of specific criminal case. The same circumstances, which are available as a component of criminalistical characteristic, are those that are known to beginning of investigation and what should be used in interests of circumstances' proving.

Similar correlation is particularly manifested in course of investigation of easel crimes. Main is that both a subject of proving and criminalistical characteristic take into account easel-nature as the main their elements.

It is possible objections that in current kind a subject of proving and criminalistical characteristic correspond in full to such desires, but this are not so. If a proving subject in common features and common requisitions are adjoined to the problem of easel crime then criminalistical characteristic considers it in isolation of it; it does not contain the recommendations on investigation of easel crimes.



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