

The Value of Fixation Method of Material Traces in the Criminal Procedure for Investigation of Crimes

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Abstract

In the research, the provisions are examined, concerning investigative activity in the criminal procedure, related to the description of material traces. The attention is paid to the material, which is recorded in the protocol of investigative action in the criminal procedure as evidences. The criminalistics value of trace evidence for the clarification of circumstances of the investigated crime is emphasised: its mechanism and its characteristic causal relations, a criminal and crime tools he used. Different kinds of problems are solved by the investigation of traces: identification, diagnostic, situational, etc.

For the qualitative investigation of crime, description of traces in the record of investigation is of great importance.

In accordance with the Part 1 of the Article 325 of Latvia Criminal Procedure Law, the course of the pre-process of investigative action and cases specified by law – also the course of other procedural action is recorded in the minutes of this action. For example, such a protocol in the criminal procedure is a protocol of inspection.

Investigative inspection as an independent investigative action represents the direct detection and investigation by the crime investigator objects relevant to the criminal case, their characteristics, properties, states and relative position. In the course of it, the major part of the traces of crime and a criminal, as well as other material evidences of paramount importance are detected and investigated.

In the research, the concept of material trace is determined. A material trace can be any change on the scene of accident, caused by the event of crime; the lack of similar changes, although, based on the mechanism of the committed crime they should be (negative circumstances).

The author carried out the analysis of scientific literature, as well as expert practice that allowed representing the main data, which is necessary in describing the material traces in the record of the investigative action.

The description of the material traces must comply with such principles as completeness, accuracy, clarity, clearness, use of the appropriate terminology, estimates and judgments.

Keywords: forensic science, view of place of occurrence, investigative actions, trace, criminal procedure.

Aim

The aim is the research of provisions specified in the protocol of the investigative activity in the criminal procedure, concerning the description of material traces.

The objectives of the research are the determination of characteristics of the protocol of the investigative activity in the criminal procedure and the value of material traces, described in the minutes of the investigative action as evidences.

Method

In the course of writing the article were used scientifically based methods, including dialectical method of cognition, comparative and legal, logical and legal, concrete and sociological.

The person, directing the process, investigator, prosecutor, judge (court) are implementing in the criminal procedure criminal and procedural proof which represents variety of cognition of reality.

The criminal and procedural cognition can be implemented strictly by the means of Latvia Criminal Procedure Law (hereinafter – CPL) [7]. To such means, refer investigative, judicial and other procedural methods of removing evidences.

In accordance with the Part 1 of the Article 325 of the CPL, the course of the pre-trial process of the investigative action and in cases specified by law – also the course of the other procedural actions are fixed in the minutes of this action. In the criminal procedure, it is the protocol of inspection. Investigative inspection as an independent investigative action represents direct detection and investigation of objects relevant to criminal case, their characteristics, properties, states and relative position. In the course of it, major part of traces of crime and a criminal are detected and investigated, as well as the material evidences of paramount importance removed.

Inspection of a crime scene in the criminal procedure is an urgent investigative action, which in accordance with the Part 1 of the Article 162 of the CPL provides for the inspection of a specific place and the objects located therein if it is carried out after obtaining the information on a committed criminal action and if there is sufficient grounds to believe that a criminal action has taken place or is continuing to take place in the location.

Timely and qualitative inspection of a crime scene can provide the investigator with important actual data concerning all circumstances, included proof [1, 380]. In addition, information obtained during the inspection will help verify various versions in order to mark the ways of their inspection, determine the scope of persons among which to search criminals and finally to solve the crime and prove the guilt of the offender.

In accordance with the Part 3 of the Article 162 of CPL, in the course of investigation of the crime scene, the person, directing the process, investigator can remove objects, bearing the traces of criminal action and documents. Objects and documents circulation of which is forbidden by law are removed, regardless of their connection with specific criminal procedure.

Removal of objects and documents is an integral part of the inspection of a crime scene.

Modern forensic science, based on norms of criminal procedure law has developed specific recommendations on order and rules in removing of traces, which can be recognised as material evidences. The main stages in the work with traces are detection of traces, their fixing, removing, saving, and investigation. These stages, as well as methods and tools of work with traces should be described in records of investigative actions. Besides, in the record it is necessary to precisely describe the results of this work – the place of detection of the trace, its size, appearance, etc.

Criminalistics value of traces is determined by the possibility of establishing the important circumstances of the investigate crime: its mechanism and characteristic of causal connections of it, criminal and criminal tools he used.

As professor A. Kavalieris defines, it is necessary to consider the prospects of the further improvement of implementation means of investigative actions. This development occurs in three main directions: development and introduction of means, which provide an opportunity to find, fix and use new types of traces in the investigation of crimes; development and introduction of scientific and technological means, which facilitate and increase the efficiency of search and fixing of traditional traces at the scene of accident; carrying out measures allowing during the inspection of a crime scene or immediately after it to carry out express research of the found traces and materials [5, 36].

Different types of problems are solved by the investigation of traces: identification, diagnostic, situational and others. The concept of a material trace is define as a material trace that can be any changes at the scene of accident, caused by event of crime; the lack of similar changes, although based on the mechanism of committed crime they should be.

The person, directing the process, as a rule, investigator, making up a protocol of inspection of a crime scene, records not only that fits his idea of what has happened, but also all information should be fixed, although at the first sight it can contradict the set leads at the initial stage of the investigation.

All facts and circumstances stated in the inspection, which can be of importance in the investigation are fixed in the state in which they have been at the time of inspection. Before the inspection or in the course of inspection, having obtained the information on

changing of the object at the scene of accident, for example, if the eyewitness has changed the location of a corpse, a pose, then the person, carrying out the examination does not pay attention to this circumstance, and in the protocol fixes those circumstances which he has seen himself. The change of the object at the scene of accident is questioned and fixed in the course of other investigative actions: interrogation, investigative experiment, examinations [4, 10].

Professor A. F. Volynsky determines that the different types of problems are solved by the investigation of traces, including identification, diagnostic, situational and others [9, 186].

In order to fulfil the procedural requirements set out in the law, the protocol should include description of all actions of the investigator, as well as everything that is discovered during the examination in the same sequence, as the examination has been carried out and in the same form in which the discovered has been observed at the time of examination [3, 18].

Undoubtedly, the description of traces in the protocol should proceed with their removal. In the criminal and procedural literature, there are different opinions of scientists about the various substances found at the scene of crime as the supplement to the criminal evidence. It depends, first of all, on their connection with the investigated criminal act. Not frequently, the type of substance can be determined only after its investigation in the laboratory [6, 28].

In the description of the material traces in the protocol of the investigative action it is necessary to specify the main circumstances and conditions of detection of traces, data about object–trace carrier and data about the trace itself.

In some aspects of above-mentioned provisions, associated with these circumstances is important to emphasise the conditions they are found, for example, any terrains or enclosed spaces. Besides, it is important to fix what the environmental conditions were, for example, rain, snow, etc. Regarding the second provision mentioned above – object–trace carrier – in the protocol, the accurate location of a particular object on which the material evidence was found should be specified, as well as the name of this object. As for the third provision associated with the data on the trace itself, it seems advisable to emphasise the circumstance: where exactly the trace was found. In this case, a number of scientists identify the conditions, which are important to specify in the protocol of inspection, for example, when this trace can be located by two fixed points. Material traces should be precisely recorded.

In her practice, the author in investigating criminal cases which have the investigator in the proceeding often paid attention to the drawbacks of procedural implementation in the protocols of inspection of a crime scene. Thus, in a criminal case on the theft of a car, the investigator described in the protocol of inspection the place of location of the car before its theft basing on the marks left by wheels in snow and indicated places of detection of wheel traces near a snow heap, although approximately 30 metres from this place, in the street, there was a residential house but the investigator did not

record it. A month later, after the inspection of the criminal case, the citizen R. was suspected of committing a theft. During the investigative action – the verification of testimonies on the scene (by that time the weather conditions have changed and the snow melted away) – the suspect R. pointed to the house in the street and the approximate location of the car which he had stolen. The investigator had to interrogate the participants of the previous inspection, including the investigator, who held the inspection in order to determine the location of the car. Only in this way, it was possible to determine the place, where the car was stolen.

In studying criminal cases of thefts from apartments, the investigator often describes the removal of traces from various surfaces; however, it is important to specify on what surface the trace was found and from what place it was removed. Thus, in criminal case of theft from the apartment of the female citizen D., during the inspection fingerprints were removed from the jewellery box. During the inspection, the investigator has not recorded in the minutes the particular location of the removed trace. The acquaintance of the aggrieved party, female citizen K. suspected of the theft of gold jewellery from the apartment of the female citizen D., during the pre-trial process testified that she moved the jewellery box from one place to another to clear the place for the coffee ware on the table. Thus the fingerprints could have remained on the jewellery box. Further on the criminal case, the expert and investigator were interrogated, who were involved in the inspection of this apartment, but they did not remember the specific location of removed fingerprints (on the external or internal surface of the jewellery box). Thus, the lack of accurate fixing of detected trace during the inspection did not provide an opportunity to the person, directing the process to prove the guilt of the female citizen K. of the theft. The accuracy of indication of place of detection of trace is important for its further use as evidence.

Furthermore, the accuracy of the indication of place of detection of trace is necessary to see the prospect of its further use as evidence, taking into the consideration the circumstances, which can negatively influence the establishment of cause and effective relationships.

On a mandatory basis, the type and nature of package of removed traces are indicated in the record; safe closing, sealing for preventing the so-called unauthorised opening and supplied with explanatory inscription.

Thus, the description of material traces must comply with the following principles: legality, timeliness, completeness, accuracy, plainness, conformity to plan, use of appropriate terminology, objectivity, and modelling.

Let's consider the provisions, associated with the essence of some principles. The important condition of the description of traces in the record of investigative action is the completeness and accuracy of reflected information. This is a general requirement, concerning all evidences including the traces. The traces must be described in such way that the information about the actual picture of crime, criminal, aggrieved party, witness, circumstances, characterising the damage caused by the actions of criminal,

as well as circumstances, characterising the method of commission of a crime and other circumstances which are to be proven; in future they could be used as the sources of evidences.

The principle of plainness of description of traces lies in the fact that the criminal procedure information recorded in the protocol should be clear to any participant concerning the place of detection, various characteristics of traces and their peculiarities, as well as the method of detection, fixing, removing and packaging.

The principle of appropriate terminology lies in the fact that in describing traces it is necessary to use scientific or generally accepted terms in the literature for the purpose of exclusion of misunderstandings and ambiguities.

One of the principles of inspection of the crime scene is the principle of modelling. The scientist A. I. Dvorkin defines the modelling as a recreation of a mechanism of the committed crime, expected actions of criminals and aggrieved parties, based on the initial accident scene, availability and localisation of available traces [2, 11].

However, in describing the material traces to full extent the observation of the above-mentioned principles are not always possible.

Sometimes investigators experience difficulties in establishing boundaries of description of the objects in procedural documents. These difficulties are associated with the inadmissibility of reflection in the records of investigative actions conclusions, assessments and judgments of investigator [8, 8].

Regarding the fixing of traces it is advisable to note that the person, directing the process should use certain expressions in describing traces, clearly describe objects and visible traces, related to the crime.

The article examined the main provisions, related to the methods of fixing of material traces. On the basis of the research, the criminalistics value of traces is determined by the establishment of different types of traces which are important evidences of the investigated crime associated with its disclosure, qualitative investigation and the rights of participants of criminal procedure and the human rights.

Materiālo pēdu fiksācijas metodes nozīme kriminālprocesā noziegumu izmeklēšanai

Kopsavilkums

Pētījumā tiek izskatīti nolikumi par materiālo pēdu aprakstu, kuri ir norādīti izmeklēšanas darbības protokolā kriminālprocesā. Tiek pievērsta uzmanība materiālām pēdām, kuras ir nofiksētas kā pierādījumi kriminālprocesā izmeklēšanas darbības protokolā. Ir

uzsvērtā pēdu kriminālistiskā nozīme nozieguma apstākļu, mehānikas un tam raksturīgo sakaru, noziedznieka un tā izmantoto ieroču noskaidrošanai. Pēdu pētījums ļauj atrisināt dažāda veida – identifikācijas, diagnostikas, situatīvus u. c. – uzdevumus.

Kvalitatīvā noziegumu izmeklēšanā pēdu aprakstam izmeklēšanas darbības protokolā ir svarīga nozīme.

Saskaņā ar Kriminālprocesa likuma 325. panta 1. daļu pirmstiesas procesā veiktās izmeklēšanas darbības gaitu, bet likumā noteiktajos gadījumos – arī citas procesuālās darbības gaitu, fiksē šīs darbības protokolā. Šāds protokols, piemēram, ir apskates protokols.

Izmeklēšanas apskate kā patstāvīga izmeklēšanas darbība ir izmeklētāja veikta objektu, kuriem ir nozīme kriminālprocesā, pazīmju, raksturlielumu, stāvokļa un vietas atrašana un izpētīšana. Apskates laikā tiek atrasta un izpētīta lielākā daļa noziegumu un noziedznieka pēdu, kā arī citu materiālo liecību, kurām ir liela nozīme izmeklēšanā.

Pētījumā tiek noteikts materiālo pēdu jēdziens. Materiālās pēdas var būt: jebkuras nozieguma izraisītas izmaiņas notikuma vietas apstākļos, šādu izmaiņu trūkums, kaut gan, spriežot pēc nozieguma mehānisma, tiem būtu jābūt (negatīvi apstākļi).

Autore veica likumu, zinātniskās literatūras un ekspertu prakses analīzi, kas ļāva izdalīt pamatdatus, kurus vajadzētu atspoguļot izmeklēšanas darbības protokolā materiālo pēdu aprakstes laikā.

Materiālo pēdu aprakstam ir jāatbilst tādiem principiem kā pilnīgums, precizitāte, skaidrība, attiecīgas terminoloģijas, vērtējumu un slēdzienu izmantošana.

Atslēgvārdi: kriminālistika, notikuma vietas apskate, izmeklēšanas darbības, pēdas, kriminālprocess.

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