

Basics of integrative criminalistical tactics

Abstract: Integrative criminalistical tactics as a branch of tactics is not able to not possess with initial provisions that are determined to known extent, as the development of its theoretical principles and so practical application of the recommendations that are the result of theoretical orientations.

Tactical technique possesses by criminalistical content and nature, but when it is perceived by criminal procedure norm and thus acquires other features, and then it loses orientation and characteristics which possessed earlier.

ICT has the property interchangeability which is carried out within a single procedural action or several, similar in its aims.

Keywords: integrative criminalistical tactics; principles, system, tactic technique, legitimacy, scientific, moral character, versatility.

Recommendations that are related to the tactical methods of forensic and investigative activities provide its consistency not only to common moral principles but also ethical standards which are created in relation to judicial and investigative activities and reflecting their specificity. Great importance for the formation and use of ethical requirements in court proceedings have provisions Constitution of Azerbaijan Republic that embody the highest moral standards in public administration, in relations between the state and personality, in proclamation and guarantees of political and personal rights and freedoms of man.

Currently, high scientific potential criminalistics allowed formulating a number of criminological theories, having a private character and defined by objectives and

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tendencies of development of science, and at the same time to formulate the principles of this science. An idea about the principle as about starting primary position, postulate, a certain rule possess known multi-significance which is related first of all to a degree of generality of that primary position, which is regarded as a principle, since in this sense it is used of the term “principle” in relation to the whole field of knowledge or separate sections, including integrative criminalistical tactics (hereafter, ICT).

Many authors take for basis of classification of the principles in the degree of generality of this or that primary position. Thus, A. J. Ginzburg attempted to formulate the principles of criminalistics and give their certain classification proceed from the concepts: general principles, private and special. Defining of the general principles of criminalistics, he refers to them two sub-groups, including the principles of historicism, the unity of system science, the unity of theory and practice, dialectical identity and accordingly the principles of correlating criminalistics and related juridical sciences, the creative usage of achievements of engineering, natural and humanities sciences, an inevitability of punishment, etc (5, p. 18-21).

For designing of principles for ICT has interest a determining by A.J. Ginzburg private principles as a combination of knowledge about content and structure of criminalistics, which, however, from our point of view does not correspond to a name of private, because they relate to their characterization to all branches of knowledge, to criminalistics in general.

In the opinion of A.J. Ginsburg to the number of special principles refers system of conclusions, which belongs to one part of the theory criminalistics or its individual issues, bearing in mind the principles of construction and testing version, the principles of interrogation, etc. Other principles that are transformed depending on the section or branch of scientific knowledge in various modifications, in the opinion of A.J. Ginsburg, can be considered as admissible and expressing in general terms the requirements relating to each branch (5, p. 19-22).

It appears that the ICT as a branch of criminalistical tactics unable not to possess by initial position defining to a known extent as the development of its theoretical principles so and practice of application of those recommendations that are a result of theoretical orientations. Such initial positions can aspire on a role of principles only if they integrate in themselves the most general ideas, reflecting a result of the modern development of theory of criminalistical tactics, in the basis of which is a generalization of investigative practices.

Some teachings, giving a definition of criminalistical tactics indicate a number of signs that are inherent to it and in which are reflected the regularities inherent all science. In particular, in opinion of N.A. Yakubovich, such signs are: mandatory compliance of developed tactics with criminal procedure law; conditionality of developed techniques to practical needs of law enforcement bodies; the accumulation of positive experience of these bodies on detection, investigation and prevention of crime, and judicial review of criminal cases; broad and active use in development of tactical recommendations of the achievements of various sciences, purposeful adaptation of their data for an efficient production of preliminary and judicial investigation (9, p. 130-136).

Analysis of the stated provisions, determined by the author as signs, allows to make conclusions that they can be defined as the principles of such branch as ICT, but this does not mean that the signs themselves may be named by principles since for the formulation of principles are used only their main characteristics and they are not a formal declaration of certain requirements, but they are aimed at optimizing of activity of this sector.

A central place in the ICT belongs to tactical techniques, in which find an implementation the requirements that are treated to it as a branch of science. Therefore, from our point of view, the principles of ICT are the following: legitimacy and scientific of tactical techniques; their dynamism; moral character; conditionality tactical techniques by investigative situations; their versatility and selectivity. These principles are not inflexible nature, since depending on the development

criminalistical tactics they can be supplemented. Abovementioned, in particular, refers to certain provisions, about which can be spoken like on possible principles of tactics, reflecting the state of development of science, but in this period it not getting a final formation. Such possible principle of ICT can be a system of tactical techniques as the most optimal expressions of the possibilities of their implementation, which provides them target orientation and efficiency in obtaining evidence. Logic of building this system enables to create optimal ways of discovering the truth and performs organizational role, both in the preparation of actions undertaken so and their implementation (3, p.29).

Let us try to consider each of these principles from the standpoint of their content and tasks. Thus, the principle of legality and scientific of tactical techniques and other elements of the ICT possesses high level of imperatives that reflects an aggregate of the requirements made to tactical techniques, and cover two main directions which are set out in principle. These are legality of techniques and their scientific nature. The concept of legitimacy tactical techniques in terms of their correlation to the requirements of criminal procedure legislation is existed two points of view, in accordance with which tactical techniques are regarded as not possessing of a sign of mandatory and having compulsory character in those cases when they are included in the norms of the Criminal Procedure law. Scientists, who express the first point, are believed that adopted by the law, developed by criminalistics some techniques lost part of tactical techniques and are the legal instructions that are compulsory for observation (4, p. 10–14). Other scholars assert that comprehended by law the tactical technique did not stop to be as a technique and did not lost its criminalistical content (10, p. 26-28; 1, p. 220-227).

From our point of view, tactical technique possesses by criminalistical content and nature, but when it is comprehended as criminal and procedural norm and thereby receives other features, in this case it loses a focus and properties which had earlier. On it justly indicated R.S. Belkin, noting that application of a norm comes out as implementation of developed by criminalistics and coming into force on the will of

law, the rules of behavior; criminalistical recommendation, criminalistical technique change its nature: from the most expedient technique they are transformed in a force of law, it means, they obtain features of compulsory instruction, the norm of life. Law cannot have tactical feature, otherwise it would have not been the law; in contrast to the tactical technique, it does not recommend, but it instructs that is these categories have various degree of imperatives, obligation and therefore their mixing is caused of erosion of faces between the norm of law and tactical technique as the elements of different sciences and various systems (on their features), but at the time, their intertie and mutual conditional are indisputable (2, p. 17).

Other element of the principle that is considered as legality and scientific approach of tactical techniques is scientific feature of the latter, their conformity of the requirements of scientific approach, that means a such designing of the tactical technique when the main references are scientific points of other branches of knowledge or scientific points of the criminalistical tactics.

Scientific approach to the tactical technique means, first of all, definition of its nature, which might be considered applicably to a studying object in three aspects: interpretation of scientific information, data of other sciences applicably to the tasks of ICT; development of actually tactical techniques that are based on the theoretical provisions of tactics; scientific substantiation of the results of generalization of investigative practice (7, p. 225).

Scientific authenticity of the tactical technique is determined by proof of the scientific point on which it is based. In process of deepening of the theoretical investigations of the ICT, it will be occurred a formation and revision of the tactical techniques concerning their goals, functions, opportunities of application. This point is related as to a formation of the tactical techniques of production of separate investigative actions so and to appearance of the new ones.

Other principle of the ICT is dynamicity of the tactical techniques which can perform its cognitive and organizational role only if they are possessed by mobility, plasticity, flexibility.

The ICT possesses with feature of substitutability which is carried out in frame of one procedural action or few ones that are close on their goals. In number of cases, under determination of opportunities application this or that technique and discovering in the cases a similar target orientation, an investigator can choose any of them, for example, such techniques, as showing material evidence, could be changed by pronouncement of expert report or by pronouncement of evidences of an individual concerning the merits of investigated in the process those or that action, circumstance. Above stated does not means that all techniques on its orientation are the same type and in this relation do not possess by a specific nature. This shows that some techniques performing functions linked, for example, with exposure of lie in testimonies or directed to restore in memory forgotten events can be interchanged. Similar feature of the tactical techniques mean its mobility, internal flexibility (8, p. 21).

The most important principles of the ICT are the moral character of tactical techniques deriving from the democratic principles of criminal procedure legislation. These principles are the realization of those constitutional determinations that declare high guarantees of the rights defense of an individual and close interconnected with ethic requirements in sphere of court proceedings; where any violation of ethic rules can be caused a violation of law requirements. In connection with this, criminal procedural law in a number of articles, mainly, related to the production of separate procedural actions, foresaw a list of prohibitions which express the requirements of ensuring of the ethic norms in a process of investigation of crimes, for example, a ban of illegal violation during interrogation.

An important principle of the ICT is conditionality of the tactical techniques by investigative situation, which is meant that in application of the tactical techniques exists logical dependence between the goal and functions for which they are assigned, and those investigative situation and further by situation of procedural action in which they are used. Similar connection is found during address to any tactical technique, for example, interconnection between choice of tactical technique and

investigative situation as by a certain combination of evidences on a specific stage of investigation is expressed in that at the basis of a choice is an analysis of one or few evidences, situation of event, behavior of an individual in this situation etc. For example, during interrogation, an investigative situation determines a list of techniques that can be used to achieve a goal of interrogation; a character of these techniques depends on data that an investigator possesses. Elements of the ICT, which are determined by the investigative situation, are corrected in a process of performance of an investigative action, since a situation that appears during its execution, as rule, depends on investigative situation but will be able to appear as independent one that is determined by circumstances of other kind (6, p. 16).

The stated conditionality of the elements of the ICT has double nature - from one side, this is a situation, at other one, proper actions which are sphere of applications of the tactical techniques. The reasons of such conditionality are explained by interaction of an investigative situation of action, and consequently, interaction of the tactical techniques, one of which is dictated by investigative situation, other - by those situation of action, which is formed during process of its production.

The next principle of the ICT is a universality of the tactical techniques that means that they are in position to implement its functions in various situations and in different kind of actions.

To universality is joined selectivity of the tactical techniques, meaning its unambiguous functional dependence from the goals and situation of application, existence of the techniques and their systems that possess strictly defined orientation.

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