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Issues of organization and production of a search

Abstract: It is considered criminalistical features of a search, its tasks, types and stages.

It is given proposals to develop the tactical plan of production of a search, determination of the sequence of works.

It is studied a correlation of criminalistical and procedural aspects of a search.

It is given suggestions to amend and addition of criminal-procedural legislation.

Keywords: a search; tactics; object; an investigator; participants of a search; technical means; recommendation; dwelling.

In a process of an investigation of many criminal cases a search is the most important investigative action, which is concluded in investigation of the buildings, parts of land and citizens (or their clothes) in purposes of finding and seizure of the material evidences, which have a significance for investigation of a case, and also detection of wanted persons and bodies.

Criminalistical description of a search is concluded in the following provisions.

Objects of a search are buildings, parts of a land and people. The objects of a search will be able to be people, bodies or his parts, subjects, documents, guns, drugs etc. (11, p. 114-115).

The main task of search is finding and seizure of the objects, which have significance for investigative case (6, p. 269-270).

According to sequence, the searches can be initial and repeated. An initial search should be produced in good time, suddenly, thoroughly, in order to exclude negative result.

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In case of searched person expected possibility of a search and was ready to it and one could not find the detected objects, items then one should make a repeated search (5, p. 334-337).

It is reasonable to conduct repeated search some time later when a searched person is convinced that an initial search had satisfied of investigative bodies. The repeated search is also conducted when during initial one due to negligence were not inspected any utility rooms or hiding places (12, p. 573-579).

During investigation of one criminal case the searches are conducted to one person or various people at the same time. Such searches are named single or group ones. The group searches give a great results since are excluded opportunity to inform the persons who keep the sought-for objects, items and it is recommended to conduct them simultaneously (literally the same day and hour) (9, p. 119-123).

In dependence of the object the searches are: personal search; search in residential and non-residential premises; search on a land; search with purpose of detection of a body.

According to the criminalistical recommendations, conducting of a search is carried out at two stages: thoroughly (planned in advance) preparation to a search and conducting of a search (14, p. 99-111).

Factual basis to conduct the search can be any information received from procedural sources (testimonies of the witnesses, victims, suspected and accused persons), operational sources (information received by the operational employees in result of search activity) and other sources, which possess with information in respect of searched objects that have significance for a case.

Criminalistics recommends determining the following sequence of the actions in process of development of the tactical plan of the search production:

a) to define an object of a search as choice of tactical techniques depends on nature of sought-for object. Thus, ones tactical techniques will be efficient in time of a search of documents, other one – in process of search a gun, the third – during search of a body etc. (10, p. 147-154);

b) to establish a place of search production and its dislocation, find out a places of location, storage of sought-for objects. Based on the circumstances of a specific case, information received about sought-for objects and place of their location one should determine accuracy address and plan of the buildings (annexes, attics, basements), a number of residents, their way of life, a daily routine and etc. This information can be obtained in housing organization or as result of interrogations of the neighbours (7, p. 421-424);

c) to define an accuracy time of a search. Necessity of a search can be appeared at any stage of investigation. Suddenness is the main tactical rule of the search. It allows detecting a person committing crime and preventing sought-for or destroying material evidences (11, p. 114-115);

d) to determine a circle and number of the search participants, which depend on complexity of investigated case, it urgency, scale of searching works and others conditions (6, p. 273-276).

Number and list of others participants enlisted for production of a search is determine by an investigator. Thus, in dependence on complexity and nature of an investigated case can be enlisted: employers of prosecutor office and police officers, specialists (fitters, electricians, doctors, criminalists, cynologist with dog and others), victim or accused (if necessary to identify sought-for objects) (5, p. 336-341).

The investigator should determine number of the searching group in order to provide external and internal security, cordoning of a place being searched, checking of documents and production personal searches, carrying out searches on the incident place, observation on behaviour of a searched person, members of his family and safety items, documents found in process of the search. In addition, he has to be in touch with others operational groups conducting simultaneous searches etc.

The investigator should explain to the participants of upcoming search what is required to search (documents, gun, drugs, body or its parts, clothes, linen, bedding etc.), assign responsibilities between them, make instruction (2, p. 588-590).

e) make ready necessary technical means. In dependence on the nature of investigated case and searched object an investigator should think over what technical

means may be required during production of a search. In addition, it is necessary to make ready a video camera, camera and others means (7, p. 421-424).

According to the provisions of criminalistics, the stage of direct production of a search includes:

a) choice of the way and means to move to the place of search production and entering into it (success of all this operation depends on this). An investigator gives instruction to the operational officers to conduct in advance a surveillance behind the scene where will be conducted a search. It is necessary to keep secretiveness of concentration of the participants of search and suddenness of penetration into the building in order to exclude opportunity to destroy searched objects (documents, items, values and etc.) (14, p. 100-108).

One of the tactical techniques used for penetration to the building is information about visit of an employer of communal services etc. But, in case of non desire to let into the room or to resist, an investigator has to be ready to accept very urgent actions (break the door, penetrate into the room through balcony, windows, loft and etc.) (10, p. 148-150).

First of all, coming into the room, it is necessary to make clear the number of people there, to gather them into the one of the rooms, define a person and check documents. After that it is explained to all persons that it will be conducted a search and give instruction about keeping an order and non-divulgence of the circumstances of intimate life of searched individuals. As rule, the minors are brought out searched room (7, p. 422-424).

If required objects are given one's own free will then investigative action can be completed by compiling of a record (10, p. 150-154).

But, in cases when one has grounds to suppose that apart from presented objects may be found material evidences having significance for the case, an investigator might permit conducting a search.

b) general review of searched place is begun from its survey by the investigator together with witnesses, make up a scheme of disposition of the rooms, correctness of a search plan, determination of search actions sequence, distribution of the duties

between participants of a search and clarification of the tasks and purposes to them (11, p. 114-115).

If production of a search is supposed in a few rooms, utility rooms, an investigator gives instructions to the experienced operational officers to lead separate groups and conduct the searches simultaneously. In this case, the investigator watches for production of search of each group doing necessary notes (2, p. 589-592).

c) detailed search supposes systematic and consistent investigation all subjects (cabinet, sofa, piano, crockery, food and others) (5, p. 335-342).

Searches are conducted on the air land on spiral (from the right to the left, from periphery to the center) (6, p. 274-275).

Searches on air land are conducted by the way of division it on the parts (sectors, squares and others), landmark of which can be the trees, bushes, stones and others (9, p. 119-123).

All found documents, items, things, values having significance for the case, are immediately presented to the witnesses and other presenting persons for reviewing and fixed with photo and video (14, p. 100-111).

During all process of a search the participants of search group are required concentration, attention and tranquility, in order not to miss any small thing having significance for successful completion of a search. If any searched person is needed to come out on necessity, one should be accompanied by a policeman. The room in which he was, should be thoroughly searched again (6, p. 274-275).

After completion of a search in the room or land in order to avoid a concealment of the searched objects, it is conducted personal search of searched individuals if one has suspicious that they could hide searched objects in their clothes, body (5, p. 336-340).

On practice, some searches are complex and protracted. In this case, it is necessary to do short break (2, p. 589-590).

d) fixation of a process and results of conducted search ifs produced with make up a record, which is compiled in two copies and consists from three parts: introduction, descriptive and final one.

Psychological features of a search production are concluded in establishing of the psychological contact with persons, to which is produced search (6, p. 274-275).

To establish psychological contact to the searched individuals and efficiency of search production criminalistics recommends the following tactical techniques:

- involving a searched person to discussion, using a dialog on various topics in process of which to watch for their reaction of a search, producing by the operational employers or technical assistants (3, p. 71-72);

- observation for behaviour of all searched individuals (mood, facial expression etc.) in process of search (1, p. 52-53).

- it should take into consideration that searched individuals bear responsibility for the false explanation, evasion or failure to give an explanation during searching. Therefore, sometimes they try to divert a searching group from a place where is a hiding place, call them to conflict and others. Sometimes, if a searched person does not have in really searched objects, he can also feel and negatively react. In all cases, an experienced investigator can feel and understand psychology of a searched individual (4, p. 111-112).

- to question of searched persons about their work, profession, hobbies, with which are often linked a choice of creation of hiding places and the ways of concealment of the searched objects (8, p. 165-168).

- in dependence on the nature and sizes of the searched objects to suppose where in this situation a specific person could hide them etc. (12, p. 274-276).

These are the criminalistical recommendations on production of a search. But, in some cases, procedural instructions do not correspond or contradict them, and also to the provisions of logics.

Thus, according to article 242 of the CPC, a search might be held "... in any residential, office or production building, in other place or any individual..." (13, p. 261).

From our point of view, this enumeration is not correct, as owing to human this list will be developed systematically and constantly. It will cause necessity often changing of legislation. Thus, currently some individuals possess with private

aircrafts, helicopters, airships and others, which are not included in the list of concept of dwelling.

Here, it should dwell upon correlation of a search and seizure, which, according to article 242.3 of the CPC, can be produced under presence of information about place of location of specific items and documents. But, notion “place of location” is not specific and in case if an apartment is such, then in all cases upon refusal to give required, an investigator should be searched it; and this is a search, but not a seizure.

As rule, a search should be conducted on decision of the court, but according to article 243.3 of the CPC, “... in cases of urgency, an investigator may conduct a search on his resolution”. To such cases the law (article 243 of the CPC) refers the presence of reliable information about that:

- in dwelling hid the items or documents, testifying about committing crime against individual or state power or preparation to committing of this crime;
- in dwelling is hidden a person, who is ready, is committing, had committed crime against individual or authorities, escaped from custody;
- there is a body (a part of body) of a man in dwelling;
- there is a real danger for man’s life of his health in a dwelling (13, p. 262-263).

It seems that stated provisions of the law are not correct and contradict to the criminalistical recommendations and logics. Thus, out of the mentioned above list are a number of crimes, during investigation of which a search is an urgent investigative actions, ex. about illegal trafficking in the narcotic drugs and psychotropic substances, against peace and human security, in sphere of economic activity etc. In this case, adherence to a letter of the law is fraught with loss of proofs and non-fulfillment of the criminal proceedings tasks.

In addition, if an individual is hidden in the dwelling, who is ready, committing or committed crime then it is necessary to arrest him but not conduct a search and create a danger fro the witnesses and other participants of an investigative action.

This is also touched the provision about real danger for man’s life and health, marked in the article 243.3.4 of the CPC.

According to article 244.2 of the CPC a counsel defender has the right to participate during conducting a search in respect of suspected or accused person and “... in case a defender wants to take part in a search or seizure, an investigator is obliged to provide him this right” (13, p. 263).

It seems that this provision should be detailed since following to it a defender might notify of his client or delay the beginning of a search such way that results of the search will be negative in advance.

Notification of a defender about upcoming search is caused a certain collision as to his urgent plan. In case, one notify a defender not informing his about purpose of the visit then this is a law infringement as the law is instructed an investigator to inform a defender on specific reasons of his invitation.

According to article 246.3 of the CPC, “... personal search and seizure is conducted by an investigator upon participation of a specialist and minimum 2 (two) witnesses of the same sex with the searched individual” (13, p. 266).

In this case an investigator male does not have the right to conduct a search of a female; this is not right.

According to article 247 of the CPC, a search record is made up after its completion. It is made the notes about clarification the rights and obligations of the participants of a search after its completion. This is not correct because it excludes application any measures to the individuals refusing in further participation of a search till compiling a record.

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