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### **The problems of production of an investigative experiment**

**Abstract:** It is studied the concept, goals, types and structure of an investigative experiment. It is considered the stages of the investigative experiment, suggested recommendations on evaluation of its results. It is considered correlation criminalistical and procedural aspects of the investigative experiment.

**Keywords:** investigative experiment; criminalistics; criminal process; reconstruction; participants of the process.

According to the provisions of criminalistics, an experiment is changing of the conditions of observed phenomenon and its ties. Purpose of the experiment is clarification of nature of observed phenomenon. Investigative experiments is one of the forms of application of experimental method of examination in preliminary investigation and trial proceedings of the criminal cases. This is an independent, testing investigative action consisting in performance of special experiments with purpose of the proofs checking, which have significance of a case. Its procedural order is provided by criminal-procedural law. This is essentially different of the investigative experiment from experimental methods of research using in other branches of sciences.

Performance of investigation experiment pursues the following aims: a) illustration of existed facts; b) detection of new proofs; c) check up the versions; d) establishing of the circumstances causing of crimes committing (7, p. 323-324).

Criminalistics is known the following kinds of the investigative experiment on establishing of possibility: a) observation, perceiving of some fact, phenomenon (possibility to see, hear in certain conditions); b) committing of some action (breaking into an object through window, broken wall).

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It should attribute to this kind also the experiments on determination on a presence or absence of professional or criminal skills; c) existence of some phenomenon or fact; d) mechanism of formation of the traces, details of an event; e) definition of time, which is necessary spend on committing those or other actions (3, p. 320-322).

Criminalistics classifies few stages in the structure of investigative experiment. The first of them is an acceptance of decision on necessity of performance of an investigative experiment. The second is the decision of an issue of its possibility in these conditions. It is taken into consideration also economic side. It is not out of the question that it is reasonable to replace the experiment with other less expensive investigative action, for example, with interrogation of a specialist, an appointment of the expert examination. The third stage is a determination of the specific goals of an experiment, the ways of performance of some specific actions. Here, it is planned an order and sequence of the experiments, and expected result (2, p. 633-634).

The next stage of it is to create required conditions for the performance of an experiment. During production of the investigative experiment is checked an objective opportunity of the existence of that or other phenomenon, fact, circumstance in certain conditions. With this purpose, during of the experiments an investigator tries to achieve maximum similarity of their conditions with those, in which happened checked events. The similarity of conditions is first of all, a similarity of a place, time of a year and a day, meteorological condition of visibility and audibility, and also similarity of used performance during of experiments of the materials, mechanisms, instruments, and other items. The last but one stage of the structure of investigative experiment is practical fulfillment of the experimental actions, which are carry out in compliance with tactical techniques developed for this investigative action, and namely: performance of the experiments in certain regime and temp; frequentness of experiences' performance under changing conditions; if necessary - implementation of the experiences by stage; performance of the experiences in the conditions maximum closed to an event, in which happened the fact, phenomenon; necessity to take into account changing and not giving into

reconstruction the conditions; carrying out the experiments under minimal necessity number of the participants (4, p. 257-258).

Final stage of the performance of investigative experiment is to evaluate the results received, formulation of the conclusions having significance for a case. Assessment of reliability of the experimental actions include decision of the issues: whether the conditions of reconstruction and experiment have corresponded to the actual circumstances of investigated event; whether received results are similar under repeated repetition of the experiments; whether excluded the chances in implementation of the experimental actions (5, p. 410-413).

It is necessary to make conclusions of its evidential meaning in an investigated event during of the assessment of the investigative experiment. This might be done if only an investigator is convinced in full reliability of the results of the experiments' performance and their tallying with that had a place in reality (6, p. 115-116).

Under assessment of the results of an investigative experiment is guided by the following rules, which are based on the laws of formal logics: if during performance of the experiments have been established that the traces could appear only this way then the results might be considered reliable; the positive results of experiments will allow to make only probable conclusion about checked facts (could be, and could not be); the negative results of experiments are allowed to make conclusion that in reality that action, phenomenon could not be; the results of experiments cannot be assessed as reliable if at time of performance have been obtained opposing or different information (5, p. 412-414).

In order to perform an investigative experiment is often required to reconstruct a situation in a place of crime committing. It is carried out on the base of actual information containing in a record of the incident place examination. Circumstances, which are essential for the results of an investigation experiment, should be reproduced accurately and in full compliance with the facts having place in reality. Otherwise, the results of the investigation experiments will not be had an evidential significance. Reconstruction might be carried out as in a place of incident so and other place with help of the objects-originals or their analogues. An investigator may

invite as a consultant of the specialists for decisions of the issues requiring of special knowledge (1, p. 19-22).

A performance of the tests is the main elements of the investigative experiment. An investigator manages with their carrying out, and a person fulfills them is whom testimonies are checked or a man who specially appointed for that. The investigator watches for performance of planned tests, for observing of the conditions of their implementation, makes the measurements, fixes the course and results of the experiment (4, p. 261-262).

The more often in practice are made the investigative experiments on establishing of possibility of perception of any fact, phenomenon, checking of visibility or audibility. All this is fulfilled in the place where it happened in reality examined event and where it is necessary to consider all factors, which influence onto visibility and audibility. In course of experiment on visibility are solved the following issues: whether one can identify of an individual from a certain distance, discern the item being kept by him, determine their colour, and during the experiment on audibility are resolved the next issues: whether one can determine a specific individual on a voice, hear certain phrases. The results of these experiments might be subjective that is explained with special strained attention of whose testimonies are checked, age, profession, physiological particularities of his. For example, heightened perception is found those individuals, to which is absent of the organs of perception; eyesight is good developed to the deaf persons, and hearing and hearing memory – to the blind individuals (2, p. 640-643).

Organizationally this experiment is fulfilled by the two subgroups: the first one headed by an investigator and an individual whose testimonies are checked, and also with witnesses are in the place where from a witness heard or saw the checked facts; and the second one – with a specialist who participates in an experiment and the persons who assist in it performance and the witnesses are imitated a checked event. Visible contact, telephone and radio communication connect of these two groups. In order to achieve more persuasiveness these tests are repeated under the modified conditions (3, p. 326-330).

During investigations of the thefts, misappropriations, murderous attacks, robberies appear necessity to check possibilities to enter into a building through the hole, to open with special instruments a window, door, safe etc. It is reasonable participating in performance of these experiments an individual whose testimonies are checked. It is not mandatory that the experiment will be fulfilled in a place where crime committed (1, p. 42-46).

It is enough to imitate a breaking open or hole on appropriate test bench and then to test them for checking of the versions about possibility of committing certain actions (for instance, whether suspected person could enter into a building through hole in the wall). It is important to design in accuracy all measurements using in the experiment. An investigator can obtain these data from a record of incident scene examination (7, p. 326-329).

During production of the investigative experiments on the cases of murders, traffic accidents one can reconstruct the situation existing at time of crime committing, and produce the dummies corpse for these purposes, on which imitate some features of it, for example, height, bodybuilding, weight, clothes, location of an incident scene (1, p. 66-69).

In order to check and confirm reliability of the testimonies of suspected or accused persons one can make investigative experiments on checking of presence certain professional or criminal skill to them, for instance, in producing of false money, securities, identification cards, diplomas (7, p. 327-330).

Investigative experiments on establishing of a time that needs to commit those or other actions the most often are fulfilled on the cases about criminal increasing of volume of works done with purpose of check quantity of crime participants, and also to clarify an issue on the time, which should spend to overcome certain distance. In order to receive reliable responses it should be taken into account psycho-physical state of an individual whose testimonies are checked, at the time of crime committing and in period of the experiment, as it is inevitable here presence of an element of subjectivism (1, p. 71-72)

The results of investigative experiment can be so convincing that during it implementing an individual whose testimonies are checked may say that they are

false. This circumstance should be reflected in a protocol of the investigative experiment (5, p. 416).

Meanwhile, listed criminalistical recommendations not in all correspond to the requirements of the criminal-procedural law, and sometimes, the latter excludes their purposeful application.

So, the law does not provide an obligatory participation of the witnesses in the investigative experiment that it seems wrong since it increases the subjective beginnings in criminal proceedings.

As well as in other investigative actions, the protocol of investigative experiment is made up after completion of it that also is wrong.

The right of the representatives to participate in investigative experiment is not specified in the CPC that sufficiently influence in ensuring of the rights of potential accused being long time in status of witnesses in the investigative experiment.

An order of ensuring participation of a defender in the investigative experiment is not determined. It is not specified, whether the defender of suspected or accused person has the right to participate in the investigative experiment with participation of a witness, which have an important significance for a client.

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