

Interrogation of the victims during the investigation of crimes committed by youth extremist groups

Допит потерпілих під час розслідування злочинів, учинених молодіжними екстремістськими угрупованнями

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Abstract

For several years in Ukraine and in other countries, the activity of informal criminal groups, in particular, of the youth groups, can be observed.

Thus, there is a need for theoretical understanding of the activities of the respective criminal groups in order to make proposals for improving the current criminal procedural legislation.

The article emphasizes the importance of evidential information that can be obtained during the interrogation of victims of crimes committed by youth informal groups of extremist orientation. In this connection, the authors have considered: 1) the features of the victims to be taken into account when investigating the criminal activity of informal youth extremist groups; 2) sources of information on the identification of victims of crimes committed by members of youth informal groups of extremist orientation; 3) separate questions of questioning of the specified category of victims. The scientific literature devoted to informal youth groups, fight against extremism, investigation of group crimes, etc. was analyzed during the

Анотація

Протягом декількох років в Україні і в інших країнах можна спостерігати активізацію діяльності неформальних кримінальних груп, зокрема – молодіжних.

Таким чином, відчувається необхідність теоретичного осмислення діяльності відповідних кримінальних угруповань з метою вироблення пропозицій по удосконаленню чинного кримінально-процесуального законодавства.

У статті наголошується на важливості доказової інформації, яка може бути отримана під час допиту потерпілих від злочинів, учинених молодіжними неформальними групами екстремістської спрямованості. У зв'язку з цим нами розглянуті: 1) особливості потерпілих, які потрібно враховувати під час розслідування кримінальної активності неформальної молоді екстремістського спрямування; 2) джерела інформації щодо виявлення потерпілих від злочинів, учинених членами молодіжних неформальних груп екстремістської спрямованості; 3) окремі питання допиту вказаної категорії потерпілих.

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scientific research. In addition, such scientific methods as observation, analysis, synthesis, comparison, generalization, extrapolation were used. The empirical basis for the study was the investigation of crimes committed by members of youth informal groups (in particular, with extremist orientation). A promising area of scientific and applied research of the stated problem is the development of methodological recommendations on the conduct of communicative investigative (search) actions, in particular, the questioning of such a procedural figure as the victim.

Key Words: interrogation, victim, investigation, crime, youth, informal group, informal association, extremism.

Introduction

The issues of the article that the authors are concerned with are relevant in view of the processes that are taking place in Ukraine and in the world at large.

It is an increase in negative processes in social and economic life due to the global pandemic of the coronavirus and the associated collapse of the economy and, as a result, impoverishment of the population.

All this leads to the intensification of the activities of informal criminal groups, in particular youth groups.

In a youth environment, it is easier to form radical views and beliefs under the influence of social, political, economic and other factors, since young people are most vulnerable to destructive influence. Thus, young citizens are joining the ranks of extremist and terrorist organizations that actively use them for their political interests.

Accordingly, certain aspects of the investigation of crimes committed by such groups require scientific research to develop recommendations for law enforcement agencies.

In particular, the interrogation of victims of such crimes is of considerable scientific interest.

У процесі роботи над статтею була проаналізована наукова література, присвячена молодіжним неформальним групам, боротьбі з екстремізмом, розслідуванню групових злочинів тощо. Крім того, були використані такі наукові методи, як: спостереження, аналіз, синтез, порівняння, узагальнення, екстраполяція. Емпіричною основою дослідження стали матеріали розслідування злочинів, учинених членами молодіжних неформальних груп (зокрема, екстремістської спрямованості). Перспективним напрямком науково-прикладних досліджень заявленої нами проблематики є розроблення методичних рекомендацій, присвячених проведенню комунікативних слідчих (розшукових) дій, зокрема допиту такої процесуальної фігури, як потерпілий.

Ключові слова: допит, потерпілий, розслідування, злочин, молодь, неформальна група, неформальне об'єднання, екстремізм.

In many situations, the victim's testimony can be of high probative and search value, as he becomes aware of data that is impossible or extremely difficult to obtain from other sources. So the purpose of this scientific study is to identify the features of interrogation of victims in the investigation of crimes committed by members of youth informal groups of extremist orientation.

Accordingly, this article is one of the first in the forensic science of scientific research, devoted to a comprehensive analysis of the interrogation of victims during the investigation of crimes committed by members of youth informal groups of extremist orientation.

Therefore, the main task of this scientific work is to comprehensively investigate such investigative actions as the interrogation of the victim during the investigation of crimes committed by members of youth informal groups of extremist orientation and to make recommendations for its improvement, which must be implemented in the existing criminal procedural legislation.

Theoretical framework

Significant contribution to the development of the scientific basis for the interrogations was made by forensic scientists and proceduralists Boyko (2001), Bashkatov (2002),

Levikova (2002), Khaletska (2008), Bliznyuk (2010), Lisovets (2011), Kukhar (2011), Andryushchenko (2015), Vasylichuk (2016), Pavelkov (2016), Schafer, Navarro (2003); King (2009), Prisyajnyuk (2007), Chaplinsky (2010), Kazmirenko (2009), Larkin, Sabadash (2012); and others.

The informal organizations have been the subject of study by Boyko (2001), Khaletska (2008), Kolomoets, Liutikov, Larkin (2017). Vasylichuk (2016) has studied an extremism issues.

However these studies were devoted only to certain aspects of the interrogation of victims.

At the same time noting the considerable scientific achievements of scientists in the development of investigative and, in part, judicial interrogation, it should be noted that there are still a number of problems related to legislative, theoretical and practical aspects, in fact, varieties of judicial interrogation of victims and witnesses, the solution of which requires more than theoretical understanding, but also practical direction.

This is especially true in the sense of the innovations of the current CPC (Criminal Procedure Code) of Ukraine, where the judicial interrogation has partially updated its normative consolidation, but often in an excessively concise in content and formally indistinct form. They remain unresolved questions about the legal definition of judicial interrogation of victims and witnesses, the differentiation of its varieties, the subjective composition of conducting of some of them, the limits of application, admissibility and necessity of using tactical means, and others.

Methodology

The methodological basis of the study is the dialectical-materialistic method of scientific knowledge of social and legal phenomena and general scientific and special methods based on it.

Thus, the methods of logic (analysis, synthesis, induction, deduction, analogy, etc.) were used in the study of normative acts, materials of criminal proceedings, concepts, viewpoints of authors on particular issues within the subject of research, their generalization and formulation of conclusions; modeling - during the formation of conclusions to sections and general conclusions of the article; descriptive and analytical - for

interpretation of legal categories, formulation of definitions and clarification of conceptual and categorical apparatus; comparative legal method - for comparing of scientific research and concepts available in domestic and foreign science, the provisions of regulations. Sociological and statistical methods were used to analyze and summarize the empirical base.

The theoretical basis of the study is the works of domestic and foreign scientists in the field of criminal procedural and criminal law, criminalistics, psychology, ethics and more.

The legal basis for the study is the Constitution of Ukraine, international treaties, decisions of the Constitutional Court of Ukraine, criminal procedural legislation of Ukraine, as well as of some foreign countries, resolutions of the Plenum of the Supreme Court of Ukraine.

Results and discussion

I. Identification of victims during the investigation of crimes, committed by members of youth informal extremist groups

It is clear that one of the most common sources of evidence in criminal proceedings with members of youth informal groups, including cases of extremism, where violence is predominantly committed, is the testimony of witnesses. Despite of it the importance of the victim's testimony also cannot be diminished although this source of evidence is quite volatile. It should be borne in mind that the victim in such proceedings is one of the main sources of obtaining evidential information that is relevant to the effective investigation of the case, since such a person: reports a crime, is a witness of criminal acts, has traces of, for example, violent acts and it is up to him, at the initial stage of the investigation, to determine all the circumstances of the crime, other victims, eyewitnesses, perpetrators and the motivation for their actions. These proceedings are characterized by the fact that often these crimes are committed not only because of certain socio-economic factors and personality traits of the offender, but also depend on the specific traits of the victim: his/her nationality (ethnic group), belonging to a particular religion (denomination), social group (such as a fan association), skin color, behavior, even appearance, and more.

However, many of these features of the victim, as a rule, are not inherent in similar features of the perpetrator (for example in the "one-on-one"

coordinate system, the victim is alien to the suspect, in particular, it is inherent in the "skin environment" (Schafer, Navarro, 2003; King, 2009; Racist Skinheads: Understanding the Threat, 2012).

This is also important because the victims belonging to certain social groups, subcultures (countercultures (Roszak, 1969)), ethnic groups, sexual minorities, illegal migrants (citizens of other countries or stateless persons who are not yet fully assimilated into society, since there are appropriate "barriers" to this: a common language that is "foreign" to most citizens of the host country; culture, religion, which keep one from entering the society in which he or she is hosted or not supported by the citizens of the country of residence, stay) and others "risk groups", do not always report committing unlawful (criminal) actions through them through certain internal installations, prejudices.

One of the peculiarities of investigating criminal acts of extremism perpetrated by youth informal entities is the widespread phenomenon – the reluctance of most victims (first of all, those who are at risk) to report crime and therefore cooperate productively) with the investigation (prosecution) for the purpose of establishing and exposing the perpetrators. The last one is due to the fact that states rarely may provide security to victims (as well as witnesses) in the case of convictions, and law enforcement officials sometimes sympathize to or support the ideas of racism, nationalism, extremism, etc.

For example, according to a survey, 62% of victims of racial, national or religious hatred (in most cases involved by youth informal groups) did not contact law enforcement, and only when such data become known from conversations with relatives, teachers, due to information from medical institutions, etc., the victims contact law enforcement agencies (Larkin, & Sabadash, 2012, 33-34). Sometimes the passiveness of the victims in the exercise of their rights is associated with the so-called "secondary victimization" – for non-professional participants, the criminal process itself, regardless of the results, is a burden ("punishment"). Therefore, it is considered that the victim, being involved in the process of pre-trial investigation, trial of the case, suffers repeatedly: repeatedly called to the investigator, investigating judge, prosecutor; gives evidence, participates in other investigative and procedural actions, appears in court, etc. Moreover, in so doing, he received virtually no compensation for the moral and material damage

caused by the procedural burdens (Prisyajnyuk, 2007, 21).

In general, the following features of victims can be distinguished, which should be taken into account when investigating criminal activity of informal youth of extremist orientation:

- the presence of serious psychological trauma, which leads to painful (negative) associations during the interrogation of such a person, reminiscent of the tragic events for the person;
- victims belonging to "risk groups" on the basis of, for example, nationality, race, religion, sexual orientation, etc. – feel insecure, sometimes justifiably suspecting investigators (operatives or the prosecutor) of prejudice against them, while using their negative experience of dealing with law enforcement officials in the past (particularly when confronted with unprofessional police and police reports);
- doubts about their safety and the safety of their relatives, their property;
- unwillingness to testify in open court, knowing that the court will be attended by the accused persons, their like-minded people, relatives and friends, an aggressively minded crowd who can retaliate by committing an act of lynching;
- reluctance to appear in court after giving testimony at a pre-trial investigation after the transfer of certain information about such testimony (often for the sake of public relations) to the media by law enforcement; attempts to refuse the evidence given earlier, to change their place of employment, residence, departure abroad (obtaining refugee status), etc.;
- the negative factor is also the presence of the victims in a certain social group, where the specific barrier to communication with the investigator is the specificity of a particular subculture (language, religion, culture, age, etc.), which does not belong to the investigator, like most citizens.

An analysis of the empirical material shows that information on victims of crimes committed by youth informal groups of extremist orientation is obtained by:

- 1) during the interrogation of eyewitnesses, other witnesses (for example, ambulance workers or police officers who first arrived at the scene) and victims;
- 2) in case of identification of the body of an unrecognized person: as a result of

- identification of the body and recognition (if any such grounds) of relatives of the person as victims;
- 3) as a result of the examination of persons who have sought the help of medical institutions in connection with the receipt of bodily injuries, which could in due course have been obtained during the commission of encroachments which are the subject of investigation;
 - 4) identification of persons whose property has been damaged or destroyed, for example, after a football match;
 - 5) among the persons who left the settlement immediately after the criminal acts of an extremist movement or disappeared unknowingly (at the request of relatives, for example);
 - 6) according to information from mass media, in particular on the Internet;
 - 7) as a result of the analysis of the videos made by: cameras of external (street) surveillance; TV news operators, incidental witnesses; video that was made by the suspect (on the phone, for example) and removed during the investigation, etc.

II. Features of interrogation of victims during investigation of crimes, committed by members of youth informal groups of extremist orientation

The founder of criminalistics Hans Gross, who wrote, "... the interviewed persons are a skeleton, and their testimony is the blood and flesh of a preliminary investigation" played an important role in the interrogation (Gross, 2002, p. 75). At its core, interrogation is a "complex act of communicative interaction" (Kazmirenko, 2009, p. 63), which requires investigator's thorough training, focus, professionalism, ethics and ability to calculate tactical risks.

Depending on the circumstances of the crime, the victim's health, the investigator decides to interrogate. If possible, preparation should precede the interrogation. In addition, here it is necessary to support Chaplinsky, who emphasizes, "Lack of planning or inadequate preparation for interrogations leads to their superficiality and inefficiency" (Chaplinsky, 2010, p. 148).

The following circumstances that an investigator may encounter should be taken into account when questioning the victim in the specified category of crimes:

- 1) the presence of serious psychological trauma, which cause painful associations during interrogation;
- 2) victims (especially from the "risk group") feel uncertain about bias against the investigator (prosecutor), including having a negative experience of dealing with law enforcement officers as a person within the "risk group";
- 3) doubts (uncertainty) about the own safety and security of close relatives;
- 4) reluctance to testify in a court hearing, knowing that there will be like-minded persons, relatives, friends of the accused persons, members of the media in the court, that the hearing may be broadcasted live on television, on the Internet and when they can report some data regarding the victim (address, family composition, etc.).

Considering these circumstances will allow the investigator to manage the interrogation situation and facilitate its conflict-free situation.

The list of basic questions to be clarified during the victim's interrogation can be divided into three groups:

- 1) those concerning the victim's identity;
- 2) those relating to the commission of a criminal offense (crime);
- 3) those concerning the person (s) who committed the criminal assault and it is believed that they are members of an informal youth group of extremist orientation. The investigator develops a specific list of questions that need to be asked and can be corrected and clarified directly during the interrogation.

It should be borne in mind that the victims, who at the initial stage of the investigation expose the suspects, in the future often even in the absence of a real threat of post-criminal pressure by the suspects and their entourage, attempt to abandon their previously given testimony, interrupt the contacts with the investigation, intend to leave permanent residence and not appear in court during the case.

The latter circumstance is extremely important: the investigator during subsequent meetings with the victim, carrying out certain procedural actions with him/her, should analyze the mood change of the victim and in every way support his / her chosen behavior: on the one hand – emphasize the need to expose the perpetrators and, on the other, confirm the guarantees of safety of the victim and his / her close relatives

(preventing the person from refusing to testify and cooperating with the investigation (the prosecution).

It should also be noted that certain issues might arise during the trial when it comes to the victim's involvement in resonant criminal proceedings about group criminal convictions of informal extremist youth. It is about finding the victim in the spotlight of the media, the state, the prosecution, the investigation, public organizations. In particular, this may result in attempts to change the testimony given during the pre-trial investigation.

Conclusions

The victim's testimony in the criminal procedures is important to prove in different categories of criminal cases. Quite often it is the only direct evidence of the accused's guilt.

The victim gives evidence regarding the circumstances to be proved (Article 91 of the CPC of Ukraine). An integral part of the victim's testimony is his or her opinions and the assumptions made during the interrogation. This is admissible given that the victim is in most cases an eyewitness to a criminal offense, directly confronted with the criminal offense or the offender himself, and therefore more than anyone aware of the circumstances of the criminal offense causing him harm.

As for the investigation of crimes committed by members of youth informal groups, it requires the investigation of all sources of evidence, including the testimony of the victim(s).

During the interrogation in court, the actions of the court are directed not only at the gathering of evidence, but also at their examination and evaluation, since in this judicial investigation such elements of the process of proof are inseparable. The court, hearing the victim's testimony, the witness, the accused, compares them with the already existing evidence, examines them from the point of view of authenticity, but the court is not bound by the evidence given to him by the parties.

A promising area of scientific and applied research of our stated problem is the development of methodological recommendations on the conduct of communicative investigative actions, in particular, the questioning of such a procedural figure as the victim.

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