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Research Article

THE ROLE OF THE SPECIALIST IN CONDUCTING INVESTIGATIVE ACTION OF SEARCH

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ABSTRACT

The article highlights the developed classification of the general and special tasks of the specialist during the search, based on the analysis of articles 69 and 70 of the Criminal Procedure Code, which determine the legal status of the specialist who can be described as a scientific and technical assistant of the investigator. It was also supported that the expert's involvement in the search shortens the time required for the search inquiry and increased the likelihood that information serving as evidence would be discovered and seized in the predetermined order.

KEYWORDS

Investigative action, search, inquiry officer, investigator, specialist, judge, decision, sanction.

INTRODUCTION

The criminal procedural law clearly defines the rights of the specialist in addition to the following obligations: the specialist is obliged to appear upon the summon of the inquiry officer, investigator, prosecutor, court; to participate in the performance of the investigative actions and the court consideration, using the scientific-technical means, special skills and experience

for the identification and fixing of evidences; to draw the circumstances important for the establishment of the truth on the case to the attention of the inquiry officer, investigator, prosecutor and the court; to give explanations in respect of performed actions; to assist the inquiry officer, investigator, prosecutor and the court in the identification of the reasons of crime, the

conditions encouraged its commission, and in the development of the measures for their elimination; not to disclose the materials of the inquiry and preliminary investigation without the permit of the inquiry officer, investigator, prosecutor; to follow the procedure in course of investigation and court consideration .

Chapter 20 of the current Criminal Procedure Code specifies the provisions that the search is conducted according to the decision of the investigator or the court, and if necessary, the specialist and an interpreter can also participate in it .

The participants of search can be classified into the following groups, taking into account their position in the process of proving:

1. Subjects authorized to conduct a search. They can include the inquiry officer, the head of the inquiry unit and his deputy, the investigator, the head of the investigative department, division, unit, group and his deputy, as well as a prosecutor. Also, the person authorized to conduct a personal search - the pre-investigation body, if there are sufficient grounds to suspect that the detained person has a weapon or intends to get rid of the evidence revealing that he has committed a crime;
2. With the permission of the investigator, the suspect, the accused, the defense council, the victim, the civil plaintiff, the civil defendant and their representatives;
3. Persons who are subject to a personal search prior to the initiation of a criminal case;
4. The person whose home, residence, service room, production building or other place is being searched, his adult family members (if the person was in the place where the search was being conducted);

5. Persons who may be involved in the proving process, namely, witnesses, experts, specialists, interpreters, expert witness (impartial witness), as well as representative of the relevant government or self-government body of citizens;

6. Auxiliary participants of the search. They include persons engaged by the investigator to carry out technical operations that require physical actions (lifting, moving, cleaning, security, etc.) rather than searching.

During the search process, a specialist is recruited to participate in the search in order to use scientific and technical means, special knowledge and skills to help find, strengthen and seize items and documents.

Experts are fully involved in search and investigation activities, per the analysis of judicial investigative practice. Because the search and investigation action must be videotaped in accordance with Article 91 of the Criminal Procedure Code. It turned out, however, that the majority of the search reports we examined lacked the proper indication that the specialist was participating and that the search process had been videotaped. The question of videotaping the search and the specialist's participation was also disregarded in the decision to conduct a search.

In our view, the specialist's function being restricted to the video recording of the search precludes the use of specialized knowledge intended to locate hidden objects.

There is no question that specialized knowledge must be used in criminal investigations. To facilitate efficient inquiry and the optimization of evidence-related operations, scientists are creating and enhancing methods for locating and storing information that acts as evidence.

It should be highlighted that the investigator cannot possess a comprehensive understanding of all aspects of human activity. It is sufficient to have an understanding of the pertinent directions and possibilities of scientific knowledge in order to utilize the scientific achievements in the investigation of crimes, including searches.

Based on the analysis of articles 69 and 70 of the Criminal Procedure Code, which determine the legal status of the specialist, he can be described as a scientific and technical assistant of the investigator. Finding and consolidating information serving as evidence is carried out by the investigator, at the same time, the participation of a specialist in this process plays an important role in the effective resolution of the listed tasks.

In our opinion, it is necessary to distinguish the general and special purposes of involving the specialist in conducting a search. In our view, the general purpose of involving the specialist the search process include:

- use of technical means to search and find various objects (items). Today, there are many special technical tools designed to find traces of metal objects and biological origin, which are also widely used in the investigation of crimes. Usually, the use of these technical tools is complicated, and their use can lead to a positive result only if the specialist has certain knowledge and skills;
- recording the search process and results using technical means (photo, video recording). In this case, the investigator entrusts the specialist with the task of recording the search process and its results, allowing him to concentrate on the search operations without being distracted by capturing pictures or films;
- it is important to explain to the investigator the properties and specific aspects of the found items,

including the decision to take them away. Expert assistance may be required if the crime was done with handcrafted items that are challenging for someone without specialized knowledge to comprehend.

- The specific purpose of involving the specialist the search process lies in the followings:
 - based on the the investigator's order, preliminary examination of the objects found using special tools. For instance, in accordance with paragraph 17 of the Resolution of the Plenum of the Supreme Court No. 12 dated April 28, 2017, taking into account the fact that special knowledge is required to determine the type of narcotic or psychotropic substances, their quantity, designation and properties, origin, development, production method, as well as whether the plant belongs to the crop containing the narcotic substance, relevant conclusions of an expert or specialist must be obtained for each case ;
 - to give the investigator advice on how to handle the found objects properly. For instance, in accordance with paragraph 7 of the Resolution of the Plenum of the Supreme Court No. 24 dated August 24, 2018, information on digital (electronic) carriers should be removed or reviewed only with the participation of a specialist ;
 - locate hidden locations. For instance, experts in auto repair sphere can quickly locate a hidden location in a car ;
 - packaging anything retrieved during the search in accordance with the investigator's directions. In order to make the most of the time available for the investigation, it is preferable to delegate this responsibility to a professional when there are enough items found during the search or when packaging expertise is needed to preserve the traces of certain objects;

- providing assistance to the investigator in the correct description of the seized objects in the report. Such assistance might be required if objects are discovered during the search whose unique properties call for the usage of specialized terminology (such as the name of certain technical mechanism specifics).

Our opinion is that investigators undervalue the specialist's contribution to the search, which is evident in the fact that he is not participating in carrying out the investigation operation. This raises the possibility that the search will be ineffectively carried out and that the sought-after items won't be discovered. This is especially true when the evidence crucial to the prosecution's case comes from biological sources, such as traces left behind on electronic devices.

The analyses presented above shown that the search is a difficult and time-consuming investigative activity, and that the success of the search is strongly related to the definition of its participants and the division of work among them. Overestimating the capabilities of the investigator may lead to the loss of evidence.

Taking into account the above, the participation of the specialist in the search reduces the time of the investigation, it can also be safely noted that it allows for the preservation and use of evidentiary information to increase the likelihood of its discovery and appropriate seizure.

CONCLUSION

In conclusion, according to Article 27 of the updated Constitution of the Republic of Uzbekistan, the following fundamental provisions are specified “Every person has the right to privacy, personal and family secrets, honor and dignity to be protected. Everyone has the right to protect their personal data. Everyone

has the right to freedom of correspondence, conversations by telephone and other telecommunication devices, postal and telegraphic transmissions and other communications and to their confidentiality. Limitation of this right is allowed only in the cases and in the order established by the law, based on the decision of the court. Everyone has the right to housing security. Deprivation of housing is not allowed without a court decision. No one has the right to enter a person's home or other property in a way and in a manner other than that provided for by law, to conduct a search or an inspection.” For this reason, each specialist should be aware of the cause for his call before to joining the search, and if he does not have the necessary information, he should decline to take part. Therefore, the specialist's understanding of his rights and obligations, participation strategies, and both theoretical and practical aspects of the search serve to both prevent the violation of citizens' constitutional rights and to obtain high-quality evidence during the proof process.

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