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Recording Of Evidence At The Stage Of Pre-Trial Proceedings

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Abstract: The article substantiates the procedural protocol for securing evidence in pre-trial proceedings. Based on a scientific analysis of current legislation and the opinions of researchers, conclusions and proposals have been developed regarding the procedural protocol for securing evidence in pre-trial proceedings.

Keywords: Consolidation of evidence, criminal proceedings, information, form and method of evidence, digital information.

Introduction

Strict adherence to the norms of criminal procedure legislation requires the prompt and complete disclosure of crimes through the collection, examination, evaluation of evidence and their procedural registration based on established requirements, the imposition of a fair punishment on each person who has committed a crime, and the exposure of perpetrators, ensuring the correct application of the law so that no innocent person is convicted or held accountable.

According to Article 90[1] of the Criminal Procedure Code of the Republic of Uzbekistan, data and objects may be used as evidence only after they are recorded in the minutes of the investigative action or the minutes of the court session. Responsibility for maintaining records is assigned to the investigator and the inquiry officer at the stage of inquiry and preliminary investigation, and in court - to the presiding officer and the court clerk.

It is established that the protocols include: information about the participants of the investigative or judicial action, explanations of their rights and obligations to these persons; the place and time, conditions, process and results of the investigative or judicial action, a description of the material objects found in it and their signs significant for the case; facts requested for confirmation by the participants of the investigative action or judicial proceedings; their testimony, explanations, comments on the causes of the incident; petitions, complaints, refusal filed by them; facts of violations in the course of the investigative action or

judicial proceedings, as well as measures taken to eliminate and prevent these violations.

In our opinion, the recording of evidence is understood as their consolidation, that is, the reflection of accurate information in order to recognize them as evidence after such actions in the case in the manner prescribed by law.

In other literature, procedural recording is often expressed as "consolidation of evidence." In this case, the consolidation of evidence is interpreted in such forms as "reflection of factual information established by the investigator in procedural documents," "documentation and procedural confirmation of the collected evidence."[2] Criminalistic literature mainly emphasizes the method, means, and material origin of recording as an object of recording.[3]

As N.N.Lisov writes, the basis of the concept of recording evidentiary data is formed by the following important features: the immediate task of recording (the preservation of evidentiary data available in various sources); the subject of recording (information about the event: images of objects, inactive objects and subjects, the dynamics of the process of development of criminal activity, actions, etc.); methods of recording (tactical methods and scientific and technical means used by subjects engaged in the activity of detecting and solving crimes); the ultimate goal of recording (obtaining procedurally recorded factual data necessary for the consideration and resolution of case documents) [4].

Yegorov and others emphasize that the essence of recording evidence is manifested in the following: a) interpretation and transfer of factual information contained in the material representation to the means of proof; b) ensuring the preservation of evidentiary data for repeated use in the process of proof; c) as a result of the preservation of recorded evidentiary data, their collection and use in the full implementation of proof related to the case; d) the information received by the subject conducting the proof from the point of view of the subject of proof, regulated by law, is not fully formalized, but only the circumstances relevant to the case are selected and used in the process of proof; e) evidentiary data is not only recorded, but also the ways, methods, and means of obtaining information are recorded as a necessary condition for its relevance to the case. [5]

It should be noted that during the period of proof, the relevance and acceptability of factual data are primary. From a procedural point of view, the recording of evidentiary data, in turn, confirms the activity of the subject of proof. Confirmation of the activity of the subject of proof means the recording of information in the manner prescribed by law in order to ensure its evidentiary value.

The purpose of recording evidence is not only to confirm certain facts in the case, but also to record factual information. From a procedural standpoint, it should be acknowledged that the recording of evidence is formally correct, arising from its confirmation and recording in a procedural form.[6]

Here it becomes clear that evidentiary data acquire a legal form as they are recorded in the manner and manner prescribed by law. The concept of "recording factual evidence," unlike procedural ones, has a broader forensic meaning. In this case, they mainly rely on actions related to the recording of evidentiary data and the means of carrying out these actions.

In this regard, the following opinion of A.R. Belkin can also be cited: “An analysis of the content of the concept of recording evidence requires the following characterization of this concept in the process of criminal proceedings: recording evidence is a set of actions related to the identification and consolidation of factual information using the forms, conditions, methods, and means established by law for the correct resolution of criminal cases.” [7]

In our opinion, supporting the above opinion, the following conclusion can be made: 1) recording evidence is a set of physical actions performed both with thinking and in the literal sense; 2) the object of recording is not all real information, but information collected by the subjects carrying out the proof in order to establish the truth about the circumstances that are relevant for a lawful, reasonable and fair decision in the manner specified in Article 85 of the current Criminal Procedure Code; 3) this activity is an activity aimed at reflecting the object of registration in a procedural form, which, while meeting the relevant requirements, complies with the requirements of procedural law; 4) when recording evidence, it is necessary not only to record the data in a procedural form, but also to reflect the processes related to the identification, acquisition, recording, and storage of these evidence.

From the foregoing, it can be concluded that the object of recording evidence is: a) the exact same factual data; b) the goals and methods related to their identification and recording; c) the methods and means of identifying and recording factual data.

In addition, it should be noted that recording evidence in procedural forms, in turn, requires guidance to the subjects of recording.

Evidential information, data related to their receipt and recording, is the main object of recording in the process of proof. In the process of proof, along with the main

information, additional information is also used to establish the truth in the case.

This additional information include: 1) preliminary information obtained as a result of operational-search activities by investigative bodies, as well as as as a result of the investigator's actions related to organizational, technical, and search activities, or consultations with a specialist. [8];

2) auxiliary information serving comparative and search activities for forensic research, comparison, and verification. [9]

Today, the recording of factual data in the following forms is widely used in practice: 1) in oral (verbal) form; 2) in graphical form; 3) in visual form; 4) in a visual form.

The aforementioned verbal, graphic, visual, and visual forms can also have various harmonious combinations. For example, verbal and graphic, visual and verbal. At the same time, measurement, description, modeling, observation, comparison, experiment, physical, chemical, and forensic methods are used in recording evidence.[10]

The following can be indicated for the implementation of the above-mentioned methods: a) verbal recording - drawing up a report, recording sound (sound); b) graphic recording - reflection in graphic form (schematic and scale drawings, images, sketches, drawings, as well as drawn pictures); c) visual recording - obtaining objects in their natural state (preparing templates, making copies, preparing plans, schemes); d) visual recording - video recording, filming, photography. [11]

In some cases, a comprehensive approach using technical forms and methods of recording is also possible.[12] For example, drawing up a protocol, video or photography, copying, etc. Procedural requirements are imposed on the use of any forms of recording, the application of its methods and technical techniques, since it is precisely procedural proof that is at stake.

In criminal procedure law, there are three forms of recording evidence: drawing up a report, making a decision on attaching material evidence to the case, making a decision on attaching other documents to the case. Regarding these forms, there are primary and secondary, voluntary and compulsory recording methods.[13] The primary method of recording evidence is to draw up a report, while secondary methods include video recording, filming, photography, making impressions, and making copies of traces. Such a division is due to the fact that the results of other forms of recording, except for the drawing up of a report, do not have the value of sources of evidence.

Criminal procedural legislation provides for the use of not scientific and technical means as evidence, but witness testimony, expert opinion, material evidence, examination reports and other written documents, as well as personal explanations of the accused, but does not prohibit the use of scientific and technical means (video recording, filming, photography, making molds and making copies of traces). The extensive discussions on this issue demonstrated the inconsistency of such views, putting the issue of eliminating existing shortcomings in the law on the agenda, and these shortcomings were eliminated in the current Criminal Procedure Code. However, in part one of Article 87 of the Criminal Procedure Code, it is indicated that the collection of evidence is carried out by conducting investigative and judicial actions, and also in part one of Article 91 of this Code, along with drawing up a record for recording evidence, sound recording, video recording, filming, photography, making templates, making copies, drawing up plans, diagrams, and other methods of reflecting information may be applied.

In our view, it is advisable to divide the methods of recording procedural evidence not into main and additional methods, but into mandatory (in accordance with the strict procedure of the law) and non-mandatory (voluntary), that is, methods applied at the discretion of the subject making the record. In particular, mandatory methods of recording evidence include recording in a report; non-mandatory methods of recording evidence include recording by means of audio and video recording, filming, photography, making templates, making copies, preparing plans, diagrams, and other methods of recording information. Part four of Article 91 of the Criminal Procedure Code establishes that procedural actions in the form of a search at the scene, verification of testimony at the scene, and investigative experiment for especially grave crimes must be recorded using video recording equipment. Why is the use of video recording equipment only conditionally defined for especially serious crimes?

In order to prevent the occurrence of circumstances that serve as grounds for recognizing evidence as inadmissible, as indicated in Article 951 of the Criminal Procedure Code, to establish the truth in the case, and to ensure a thorough, comprehensive, complete, and objective verification of all circumstances subject to proof, it is advisable to introduce a mandatory rule regarding the recording of certain investigative and procedural actions using video recording devices. In general, describing the technical means of recording evidence, they can be divided into the following groups:

1) means of recording oral information (means of drawing up reports, sound recording devices); 2) means of creating models - plans, drawings, pictures, diagrams; 3) means of creating material models (quantity of molds, photo and film devices, video recording tools, a set of drawings for creating a synthetic portrait, etc.).[14]

As noted above, there are several reasons why the most commonly used verbal form of recording evidence is widespread. Including:

1) imposes the obligation to carry out investigative and several other procedural actions at the request of the legislator;

2) the widespread use of verbal notation is associated with the diversity of notation objects into which the verbal definition can be introduced. These are:

a) applications, instructions and complaints; b) actions and processes;

c) material forms, their quality, condition, and structure - people, corpses, animals, objects, documents, surroundings, vehicles, and so on.[15] This form of recording evidence is considered the most historically ancient and generally accepted form due to its relative simplicity. As mentioned above, the technical method of implementing this form was expressed in the compilation of a report and sound recording.

If the recording of evidence is not carried out on the basis of the requirements specified in the current Criminal Procedure Code, the evidence is recognized as inadmissible. In our society, human dignity, his legal rights and interests occupy the highest place. Article 17 of the Criminal Procedure Code[16] prohibits the commission of actions or the issuance of decisions that infringe upon the honor and dignity of a person, lead to the dissemination of information related to their private life, endanger their health, or unjustifiably inflict ten physical and moral suffering. Since the purpose of the proof process is to establish the truth, great attention should be paid to the protection of the rights and legitimate interests of the individual in achieving it. Evidence is deemed inadmissible not only when obtained from non-procedural sources, but also when the rights and legitimate interests of citizens are seriously violated.[17]

A different approach is needed to address evidence-reinforcing deficiencies and the illegality of factual data that are not related to the violation of an individual's constitutional rights.[18] The rules for obtaining and recording information are aimed at ensuring the credibility of evidence, so their evaluation is an integral part of addressing this common task.[19] If the violations committed can be remedied through other procedural actions, they can be considered non-significant, i.e., not having affected a comprehensive, complete, and impartial investigation, and these evidence can be examined and evaluated in the future. Often this practice refers to the procedural form of recording evidence established by law.

For example, if a witness did not sign the interrogation report due to the investigator's fault, they can confirm the correctness of their testimony in court, and a witness can confirm their participation in the case during the inspection by questioning other persons who participated in the investigative action. This practice should not be assessed as non-compliance with the procedural form of securing evidence or disregard for it. Regarding the consequences of non-compliance with the procedural form, it can be added that in such cases, the prosecutor, in accordance with the requirements of Article 385 of the Criminal Procedure Code, may return the case with his instructions to the investigator or inquiry officer for additional investigation.

Part three of Article 95 of the Criminal Procedure Code of the Republic of Uzbekistan indicates compliance with the procedural form, that is, Articles 92-94 of the Criminal Procedure Code, as a condition for the admissibility of evidence. [20] Therefore, procedural decisions and protocols must be clearly and distinctly written morphologically, stylistically, and legally, and documented in the relevant document. Since they are personal-legal documents of the application of legal norms, they must always be legal, justified, motivated, reliable, logical, literate and cultured, as well as recorded at a high level as a whole.

The requirements for procedural documents of the preliminary investigation apply equally not only to the confirming, official side of such documents, but also to their content (the conditions and procedure for the actual performance of the procedural action itself). Such requirements include the legality, validity, timeliness, comprehensiveness, completeness, and accuracy of procedural documents, as well as the high level of their compilation and literacy in recording them as documents. Both procedural actions and procedural documents must meet these requirements. However, certain requirements, depending on their direction, are of great importance for the content or form of the criminal procedural act. [21]

When collecting evidence, its procedural accuracy plays an important role in the process of proof.

The recording of factual data relevant to the case, taking into account the specifics of each type of evidence, is regulated by criminal procedure law only in the investigative action of interrogation, in particular, the

procedural form in which the recording results are embodied, all the details, sequence, methods of attaching the recording results to the case, methods of their confirmation, and the procedure for their use in the process of proof.

The introduction of such rules for recording evidence serves to ensure clear reflection of evidence in case documents, obtaining reliable evidence and achieving a unified approach to recording evidence, as well as ensuring conditions for storing the obtained information. Such rules, first of all, ensure the rights and legitimate interests of individuals. Violation of the law in the process of collecting evidence leads to the loss of the legal force of the information obtained.

In our opinion, the recording of evidence is the reflection in written and electronic documents, as well as with the help of other recording means, of procedural actions aimed at collecting, verifying, and evaluating certain information about an event relevant to the case as a result of procedural and investigative actions in the process of criminal procedural activity, as well as objects and documents containing such information, in the manner prescribed by law.

In legal literature, there is a well-founded opinion regarding the tasks of criminal procedure legislation, that is, "the timely disclosure of criminal cases requires the organization of the activities of inquiry, investigation, and prosecutor's offices immediately, without leaving a trail, that is, on the basis of "hot trails."[22] This contributes to the targeted and active conduct of investigative work, the fulfillment of the tasks of preventing possible crimes, eliminating the causes and conditions that contributed to their commission. The very process of solving crimes consists of a thorough analysis of the evidence collected in the case, a comprehensive examination of the circumstances related to the subject of proof, and the identification and exposure of all perpetrators.

Today, the penetration of modern information technologies into every sphere of our society, in particular, into the activities of judicial and investigative bodies, requires the improvement of criminal procedure legislation. In particular, the photo and video recording of investigative and procedural actions using digital technical means, the widespread introduction of digital data and document circulation, and others.

Issues related to the legal regulation of relations related to the identification, acquisition, and recording of digital data and electronic evidence in criminal proceedings, investigative and procedural actions are causing widespread discussion.[23]

One of the main problems facing judicial and investigative bodies is the emergence of a new type of evidence - "electronic evidence," as well as problems related to the identification, acquisition, and recording of these electronic evidence. Despite the widespread use of the term "electronic evidence" in current legislation, specialists have scientific views on the need to distinguish such evidence as a separate type of evidence and enshrine it in criminal procedure legislation.

According to B.A. Rajabov, citing the specific features of the concepts of "electronic information" or "electronic evidence," clarifying the terms "electronic criminal case," "electronic evidence," "digital information carrier," "electronic data," "copying electronic information," and "electronic document" in criminal procedure legislation, as well as eliminating existing gaps, will serve to improve the procedure for collecting evidence. [24]

R.I. Okonenko, on the other hand, expressed his views on the introduction of other concepts related to "electronic information," "copying electronic information," "electronic document," and "electronic evidence."[25]

P.S. Pastukhov writes that in criminal procedure legislation, it is not necessary to introduce a new type of evidence (electronic evidence) or new sources of evidence (digital information carrier), on the contrary, one of the traditional evidence indicating that "information" can be in the form of electronic information, that is, material or documentary evidence. [26]

According to E.I. Galyapshna, when searching, identifying, receiving, recording, studying, and storing files containing digital data presented in binary form, it is necessary to adhere to the principles established by the International Organization for Standardization (IOS).[27]

Of course, the introduction of electronic evidence in criminal proceedings requires the development of a complete procedure for the content of this type of evidence, as well as activities related to their identification, acquisition, correct recording, and assessment.

In our opinion, in order to study the scientific views of scientists who conducted research in this area and put forward their proposals, existing problems in practice, and to find their solutions, it would be appropriate to state part two of Article 81 of the Criminal Procedure Code of the Republic of Uzbekistan in the following wording:

"This information is determined by the testimony of a witness, victim, suspect, accused, defendant, expert

opinion, material evidence, audio recordings, video recordings, film and photo materials, electronic data, protocols of investigative and judicial actions, and other documents."

CONCLUSION

In conclusion, it should be noted that the norm in this definition has a positive impact on working with evidence and sources of evidence during pre-investigation checks, inquiries, or preliminary investigations and court proceedings, helping to resolve many problematic situations. Moreover, their timely implementation in criminal procedure law directly benefits both practice and theory.

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