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V. Shevchuk

**CRIMINALISTIC CHARACTERISTIC OF CRIMES:
“CRIMINALISTIC RELIC” OR A REAL
WORKING CRIMINALISTIC CATEGORY**

At present the majority of leading criminalistic scientists admit, despite some controversial questions, the necessity and expediency of working out criminalistic characteristic of crimes as a basis for creating optimal methodology of investigation of particular types of crimes and their practical use. The characteristic is regarded as informational model of typical properties of a particular category (group) of crimes, which statistically reflects interconnection between its elements¹. At the same time, there is a viewpoint in criminalistic literature concerning inexpediency of existence and use in practice of crime investigation of this criminalistic category, as it does not meet scientific requirements. The first to introduce this viewpoint in 1987 were R.S. Belkin, I.E. Bykhovs'ky and A.V. Dulov. In a joint article, stating the problem, the authors expressed their view about “hyperbolization” the importance of crime criminalistic characteristic by some scientists and paid attention to the fact that very often making a criminalistic characteristic is substituted by the distinctive features of subject of proof in the course of investigation of various crimes². Analyzing criminalistic characteristic of murders, developed by L.G. Vydonov, O.M. Lain refers to it as a “treacherous arithmetic” and believes that there are no natural relations (especially one-to-one) between elements of criminalistic characteristic³. A.V. Dulov specified his viewpoint in the course of time, pointing out, that criminalistic characteristics of crimes cannot provide a complete criminalistic study. He believes that such incapability of a crime criminalistic characteristic can be accounted for by the following reasons: a) there is no general definition of the notion; b) there is no clear differentiation between a criminalistic characteristic, and a criminal-legal and criminological notion of crime; c) a criminalistic characteristic does not correspond to methodological principles of system and activity approaches; d) in the examined characteristics, little attention is given to criminalistic methods of crime study⁴.

Having thoroughly analyzed the views of criminalistic scientists concerning the notions and meanings of a crime criminalistic characteristic, R.S. Belkin stated in 1997 that there are no in-depth studies, which would show interconnections and dependencies between separate elements of it⁵. In 2000 he emphasizes, that “possible interconnections and dependencies between the elements of a criminalistic characteristic could be of great criminalistic importance”. However, R.S. Belkin makes the conclusion about the lack of prospects for their further study because of the fact that such interconnections are found only in a couple of cases of characteristic constructions, and there are doubts as for their representatives. Later taking into consideration his doubts as for the existence of a crime criminalistic characteristic, the scientist inclined to a drastic conclusion about the absence of this criminalistic category. As far as he is not absolutely sure in its accuracy, he leaves it for the reader to decide⁷. In his latest monograph dated 2001, R.S. Belkin states: “I am sure, that a crime criminalistic characteristic, having failed to justify hopes of scientists and practitioners, became outdated. It turned from reality, which it considered to be, into an illusion, a criminalistic phantom”⁸.

The above-mentioned ideas of outstanding criminalistic scientists deserve attention, and we can agree with some of them. However, in our opinion, there is no need to reject the notion of a crime criminalistic characteristic completely. Besides, some ideas concerning its problems are open to discussion and need a deep theoretical comprehension.

Firstly, the thesis, that the absence of a general definition of a crime criminalistic characteristic is an obstacle for the study and working out of scientifically grounded recommendations on its practical use, is objectionable. It is appropriate to mention that in criminalistics, in general, there are few universally accepted definitions of scientific categories. At present there is no universally accepted definition of the subject of criminalistics⁹. Nevertheless it does not interfere with respective scientific studies. The main thing for the definition of a criminalistic characteristic should be the right approach to the determination of its essence, establishment and study of correlations and dependencies the between elements that serve as the basis for bringing up versions.

Secondly, we can not agree with A.B. Dulov's statement that criminalistic characteristics of crimes fail to provide a full criminalistic study of the crime. As it is stated in literature, similar demands should not be placed to this category of criminalistics, as it is of a subsidiary character, is regarded only as a possible informational model and is used by an investigator as a specific "stencil", which is, so to say, mentally placed on the basic data, which are available at a certain stage of investigation of this of that type of crime".

Thirdly, the idea about the absence in the studies of a close-cut separation between a criminalistic characteristic and criminal-legal and criminological notions of the crime is open to question, which, in its turn, leads to its overloading with the data of other characteristics. Existing criminal and legal, criminological and psychological characteristics of crimes have their corresponding contents. Based of the subject of a particular scheme, there are general and separate tasks for each of them, that coincide in the essence, but differ in specific aspects of knowledge and study. All characteristics of a crime are interdependent and interconnected to a certain degree, but the aspects of the study are different. In the practice of detecting, investigating and preventing crimes, they are used together. That is why we consider M.P. Yablokov's statement correct. In concerns the fact that while forming of the elements of a criminalistic characteristic structure, taking into account the essence of the subject, which it in characterizes, it is necessary to pay attention to and use some essential criminal and legal, and criminological knowledge about crimes, which is of notional and guiding character. Otherwise this characteristic "would loose its legal guiding line, that needs criminalistic consideration and description, and would lack any content"¹².

Fourthly, we cannot support R.S. Belkin's suggestion about the necessity to turn from a criminalistic characteristic to the description of distinctive features of the subject of proof of a crime, which was regarded in the criminalistic literature till the 70s of the last century as the initial element of the methods of investigating particular types and groups of crimes. Criminalistic characteristic of separate crime categories and the subject of proof are aimed at solving different problems. These notions are different. The circumstances, which are to be proved are stated in the Criminal Code of Ukraine; their establishment is obligatory in every criminal case, irrespective of the type of crime; they cannot be substituted by its criminalistic characteristics. Establishment of the given circumstances is the task to be performed by the investigator, and the criminalistic characteristic of the crime is the means for filling in the subjects of poof with a certain content, which is aimed at detecting, investigating and preventing the crime. Based on this fact, we believe that the structure of a particular investigation method should include the list of circumstances that are the subject of poof in the cases of corresponding crime categories, and the criminalistic characteristic of them. At the same time, the subject of poof and the criminalistic characteristic of crimes are closely connected, as they contain mainly the same elements. In this connection L.L. Kanevs'ky's viewpoint deserves attention. It states that the study of the elements of the criminalistic characteristic of

crimes (even if there are no correlations between them) plays not only a guiding role in the course of investigation, but also favors deeper investigation of the subject of proof¹³.

Taking into account all the above-mentioned information, we can hold, that the criminal characteristic of crimes is not a "criminalistic survival of the past"; it is neither "the illusion" nor "the criminalistic phantom", but a real working scientific category of criminalistics, which is the basis for working out the most optimal and effective methodology for the investigation of crimes.

At the same time, it is necessary to take into consideration the problems that cause criticism of making up criminalistic characteristics of particular crimes and establishing methods of investigation, and, consequently, need deep theoretical study and solution. First of all, it is necessary to point out insufficient study of the theoretical basis of the criminal characteristic of crimes. It especially concerns programs of research and analysis of the data dealing with the important criminalistic features of its elements. The result of the programs is the revelation of correlations between the elements and the establishment of atypical versions system, which are recommended to use, when investigating particular categories of crimes. Such situation resulted in the over-simplified study of criminalistic characteristics of investigated crimes in scientific researches and these, devoted to particular investigation methods. The program of research and processing of empirical material aimed at the revelation of correlations and dependencies were not thought out properly, conclusions were often based on unrepresentative amount of studied criminal cases. That is why the answer to V.P. Bahin's fair question, why during thirty years, that have passed since the appearance of the conception of a criminalistic characteristic of crimes, there are no practical results, should be sought in the comprehension of the fact, how and among which elements correlation and dependencies should be established, when creating criminalistic characteristics of particular types of crimes.

The following problem concerns the fact that in criminalistic literature the opinion dominates that the criminalistic characteristic of a crime takes up the subjects of proof. In this connection the latter has lost its meaning in particular criminalistic methods. Many authors of scientific works, textbooks, manuals ignore the circumstances, that are to be proved. This leads to a paradoxical situation: some criminalistic methods, having escaped the subjects of proof, received nothing instead. Because of imperfection of a theoretical models and methods of collecting and studying empirical material, the criminalistic characteristic came to the description of corresponding crimes, that is the set of some criminal and legal, criminological and criminalistic lists. In the best case, the authors tried to find out probable statistical relation between the elements of the criminalistic characteristic and to work out typical investigation versions.

The formation of criminalistic characteristics of crimes presupposes the definition of its notion, essence, structure, content of its basic elements. Despite the divergence in the definition of the criminalistic characteristic of crimes, we can single out some general features of its notion that the scientists pay attention to: 1) the criminalistic characteristic is a system of generalized information concerning criminalistically important features of a particular type of crimes; 2) there are correlations and interdependencies between its basic elements; 3) the criminalistic characteristic is regarded as a possible informational model and serves the investigator as a "stencil", which is put upon the initial information, which is available; 4) taking into account criminalistic characteristics, typical inquiry versions are put forward in the process of a crime investigation; 5) the criminalistic characteristic is the informational basis for establishing and forming optimal methods of investigation of particular types of crimes. So, **the criminalistic characteristic**

is the generalized informational model, which is the systematized description of criminalistically meaningful features of crimes, that are very important for their revealing, detecting and investigating.

Comparative analysis of the existing structures of criminalistic characteristics of crimes shows, that the majority of scientists-criminalists describe its 4-6 elements. V.F. Yermolovych suggested the generalized structure of the criminalistic characteristic of crimes, including about 20 elements into it. The structure includes: connection of crimes with administrative offences as well as violations of financial, technological, labour discipline, etc.; criminalistic structure of crime; ways of escaping criminal responsibility and punishment of the accused for the offence; activity (inactivity) of a person, that objectively favored the criminal result of the evasion of the subject from criminal responsibility etc.¹⁷ There arise a lot of questions dealing with the suggested elements, and the most important of them is: how to establish correlations between them? Not going into a deep analysis of each element suggested by V.F. Yermolovych, we can point out, that hardly ail of them can be regarded as elements of the criminalistic characteristic of crimes. In our opinion, its structure should be consistent with the structure of the mechanism of the investigated types of crimes, should include blocks of typical lists about different elements, should consider correlation between them. That is why we think expedient to study six basic elements of the characteristic of crime: a) the subject of the infringement; b) the mode of the crime; c) typical tracks of the crime; d) circumstances of committing crime; e) personality of the criminal; f) personality of the victim.

When studying and establishing the criminalistic characteristic of crimes, as was mentioned above, it is important to reveal and establish corresponding correlations and dependencies between its elements, using programs and resources of computer technology worked out in advance. Besides, it is necessary to establish correlations between: the object of infringement and the mode of crime; the mode of crime and the personality of the criminal; the object of infringement and the tracks of crime; the tracks of the crime and its mode, etc. Using the above-mentioned relations favors the revelation of particular types of crimes and also the planning of their investigation.

So, the practical goal of the criminalistic characteristic of crimes is, first of all, the use of its informational component, when the investigator compares the generalized model of a particular type of crime with criminalistically significant features, that occur in a particular case of detecting and investigating a criminal offence. Effective use of the given model is conditioned by the systematization of elements of the criminalistic characteristic of crimes and the existence of corelations between them. As the result, the detection of some elements allows to make certain prognosis about the nature of other elements, unknown at the moment.

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Translated by L. Filimonova

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