

## **TACTICAL OPERATIONS IN JUDICIAL PROCEEDINGS: PROBLEMS OF FORMATION AND PRACTICAL REALIZATION**

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Optimization and increase of efficiency of counteraction to criminal manifestations in modern conditions to a large extent depends on how deeply developed the theoretical principles of formation and implementation of tactical operations. Therefore, the development of tactical operations is an urgent need for criminalistics theory and forensic practice and will positively affect the process of establishing truth in specific criminal proceedings. In recent decades, the concept of tactical operations is developing intensively, gradually moving into the rank of a separate forensic theory. It is quite natural because tactical operations activate and organize the processes of interaction of law enforcement agencies, act as a means of implementing investigative methods, solving individual tactical tasks. All this testifies to the need for theoretical substantiation and wide implementation of tactical operations in practical activities. That is why, at the present stage of development of criminalistics, the problem of developing a separate forensic theory of tactical operations is very relevant and important. Therefore, studying and researching the problems of tactical operations of court proceedings is one of the perspective directions of scientific developments of modern criminalistics theory science and the further development of the theory of tactical operations.

The justification for the need to develop and apply tactical operations during the trial of criminal investigation materials is primarily due to the introduction of the Criminal Procedural Code of Ukraine (2012), which resulted in a significant change not only in the specifics of tactical operations but also in the possibility of their

dissemination only to pre-trial investigation, but also judicial proceedings. In addition, it should be borne in mind that in Part 3 of Art. 333 of the Criminal Procedure Code of Ukraine provides for the application of measures for ensuring criminal proceedings and conducting investigatory (search) actions during court proceedings. In particular, if during the trial there is a need for establishing circumstances or checking circumstances that are essential for criminal proceedings, the court, at the request of the party to the criminal proceedings, has the right to instruct the pre-trial investigation authority to conduct certain investigative (search) actions.

Some scientific interest is the suggestions of some scholars regarding the selection and research of tactical operations and combinations in the proceedings. Thus, in the opinion of S.B. Rossinskiy tactical combination is a definite set of tactical techniques, investigative and judicial actions aimed at solving a particular task of preliminary investigation or trial and is due to this purpose and the investigative situation. Inclusion of judicial actions among the elements that make up a tactical combination, the scientist motivates the following reasons: a) the procedural delimitation of investigations and judicial actions, causing and forensic their differentiation; b) the expansion of the range of subjects of the implementation of a tactical combination, which may include a court and a judge; c) the possibility of its implementation not only in the preliminary investigation, but also in court [8, p.19-20].

In our opinion, expanding the scope of tactical combinations and operations, introducing into the number of subjects of their implementation the court, we can speak about tactical combinations and operations in the proceedings. A vivid illustration of the support of such a position is S. Yakushin's statement that the example of the practical implementation of a complex tactical combination in the stage of judicial investigation may be the election by the court (and parties) of the optimal tactical methods and line of conduct with the participants of the investigation in a conflict situation (for example, when refusal to testify, false testimony, self-denial, etc.). The solution of such situations can be the application of a complex of

judicial, organizational, technical, investigative actions and measures, which includes: a) initial judicial examination of persons who provide concerted and true testimony; b) departure of the court to the place of the event; c) conducting a judicial review; d) presentation for the examination of material evidence; e) identification of the court; is) the use (if necessary) of disciplinary means for violators of order in the courtroom, etc. [11, p.50].

Then the scientist notes that as a general rule the trial is not characteristic of any operational support of the criminal case, which is in the proceedings. The use of statutory measures for the protection of witnesses is most likely to occur during preliminary investigations. However changes in the situation eyewitness of the crime in the courtroom during proceedings and criminal proceedings, the prosecution may be used tactical means of a security nature within the kind of tactical operations [11, p.137-138]. Therefore, the proposal to expand the scope of tactical combinations and operations of the court is one of the promising areas of the theory of tactical operations that require additional in-depth study and reflection.

Some novelty and scientific interest are suggestions of some scholars regarding the identification and study of tactical tasks in court proceedings [1; 4; 6, pp. 4-5; 2, p.715-720; 7, p.22]. In this regard, O. S. Knyazkov rightly notes that in court proceedings, as well as at the stage of pre-trial investigation, rigorous classification of tactical tasks is possible only on the basis of the systemic interconnection of a certain type of tactical tasks and forensic situations requiring its optimization by adoption of appropriate tactical decisions and the use of operational tactical means of a certain type [3, p. 27-28].

At the same time, the analysis of works devoted to the problems of tactical and forensic provision of court proceedings, shows that the coverage of tactical tasks of court proceedings is limited to their names. For example, A. Yu. Korchagin notes that the general tactical tasks of the state prosecutor consist in an effective study of the evidence presented, in an effort to create conditions for a comprehensive, objective and complete study of evidence, in a timely manner and tactically competent neutralization of attempts to falsely refute, falsifications, substitutions of

evidence, in filling in the court incompleteness of pre-trial investigation, in counteracting attempts of the defendant to evade criminal responsibility [6, p.133]. Obviously, such an approach to the formulation of tactical tasks objectively requires further disclosure of their content and detail.

The purpose of the publication is to study the problems of the formation and practice of the implementation of tactical operations in the proceedings, the identification of tactical tasks in the judge, the development of appropriate tactical operations, their structure and content.

In our view, the tactical tasks in the court trial are situationally conditioned, proceed from the circumstances that are to be set, aimed at solving the interim aim of the court proceedings, the solution of which requires the use of tactical means (tactical techniques, tactical combinations, tactical operations). The tasks of pre-trial investigation and trial are primarily aimed at. If in the first case it is, first of all, the formation (identification, fixation and certification) of evidence, then for the trial, for the most part, the study (verification and evaluation) of evidence gathered in the pre-trial proceedings, as well as new evidence submitted to the court [4, p.17]. It is worth highlighting the tactical tasks that the judge, prosecutor-state prosecutor, and counsel need to resolve.

Taking into account the foregoing, deserves attention of the study of tactical tasks taking into account the stage of criminal proceedings. In particular, on this basis, one can distinguish: a) the tactical tasks of pre-trial investigation; b) tactical tasks of court proceedings; c) tactical tasks that require their solution before the pre-trial investigation, for example, tactical tasks for detecting signs of crime [10, p.170].

Tactical tasks of court proceedings, in particular: ensuring verification of testimony of the accused; Providing verification of self-defense of the accused; ensuring witness testimony; ensuring verification of the victim's testimony; providing evidence protection; provision of witness protection; providing protection to victims; ensuring the examination of documents in a judge, etc. On this basis, it is possible to distinguish the following tactical operations of the trial: "Inspection of the accused's testimony", "Inspection of the defendant's self-defense", "Verification of the

testimony of the witness", "Verification of the victim's testimony", "Protection of evidence", "Protection of witnesses", "Protection of victims" "Document" and others. Let's consider examples of separate tactical operations of court proceedings.

The tactical operation in the court is carried out "Inspection of the indictment of the accused". During the pre-trial investigation, it was found that B. came to visit A. and during his quarrels he committed a deliberate murder with a knife, and after 5 days came to visit T. and in the eyes of a pregnant woman, the latter during his quarrels made him a deliberate the murder is also a knife. In the course of the pre-trial proceedings, B. acknowledged his guilt in the murder of A. and T., and in the trial, the guilty of committing the murder of A. did not recognize, justifying the fact that the testimony on the commission of the crime was given under pressure from the police. At the same time witnesses to the murder of A., and that B. that day came to the murdered guest was not.

To resolve the tactical task that arose in the course of the trial, a tactical operation called "Checking testimony of the accused" was carried out. Having carefully studied the case, the state prosecutor drew attention to the fact that the criminal proceedings were initiated in connection with the commission of B. intentional murder of T. The protocol for the inspection of the dwelling and the discovery of the troupe A. was carried out after appearance with the guilty B. In this regard, the state the prosecutor filed a petition to a court to summon a police officer to court, who took the appearance of a guilty party from the accused. During the interrogation, he said that B. was detained in connection with the murder of T. and immediately the district police station wrote an appearance with a charge of the murder of A. and T. Since the murder of A. at that time, police officers were not known, then he wrote a report to the prosecutor to verify this fact. On the same day, the corpse A. was found at the address indicated by the defendant. In addition, at the request of the state prosecutor, a record of a knife slot with a handle of green color was investigated in the court, which was in the place where he himself indicated. when giving an appearance with a guilty party. After watching the video of the reproduction of the event and the circumstances of the crime, where G. in detail

showed how he murdered A., the defendant realized that his arguments about not being involved in the murder were disproved and he pleaded guilty.

The structure of the tactical operation "Verification of indictments of the accused" may include the following elements: The tactical task of ensuring verification of the accused's testimony. The purpose is to confirm or refute the veracity of the accused's testimony. Participants - a judge, prosecutor-prosecutor, victim, defender, specialists whose knowledge is necessary for checking self-determination. Means of tactical operation: interrogation of the accused B., who argued that A. did not kill, but found guilty under the pressure of police officers; Interrogation of police officers who interrogated and carried out, according to the accused, the pressure to admit guilty to the murder of A .; Interrogation of the police officer, who selected the appearance with a guilty charge from the accused; the simultaneous interrogation of previously questioned B. and police officers, according to the accused B. B., was pressed against him in relation to the discrepancies found in the testimony (full-time rate); application of measures for ensuring criminal proceedings and conducting investigatory (search) actions during court proceedings (333 CPCs of Ukraine), etc.

Tactical operation in the court proceedings "Inspection of the defendant's self-restraint". During the pre-trial investigation K. and L. acknowledged their guilt in the theft of money and things from apartment A. During the trial, K. suddenly stated that he under the influence of the officers of the operational units himself argued. As for the main evidence, that he was exposed, and this was a shard of a bench with the footsteps of his fingers, removed from the scene, he allegedly was taken from his court of L. and thrown into the scene of the crime. L. confirmed this statement to K. and said that he had committed theft not with K., but with an unknown nickname "ZEK". Earlier, he gave false testimony, because he was afraid of massacre on the part of this person.

In the trial, a tactical operation "Inspection of the defendant's self-restraint" was conducted. The model of the structure of this tactical operation may include the following elements: The tactical task of ensuring the self-checking of the accused.

The purpose is to confirm or refute the defendant's self-restraint. Participants - a judge, prosecutor-prosecutor, victim, defender, specialists whose knowledge is necessary for checking self-determination. Means of tactical operation: interrogation of the accused K., who discredited himself in committing the theft with maximum detail of the circumstances of the event; interrogating the accused L., who argued K. in committing the theft with maximum detail of the circumstances of the event; Review of the named area of the courtyard and glass fragments; questioning witnesses who can confirm the fact of finding a suspect in the place of committing a crime; simultaneous interrogation of previously questioned L. and K. in relation to the discrepancies found in testimony (internal rate); application of measures for ensuring criminal proceedings and conducting investigatory (search) actions during court proceedings (333 CPCs of Ukraine), etc.

The survey executed by the court found that glass fragments detected in the area of the S. region of the courtyard, and the chip with fingerprints of K., removed at the site of theft, differed in thickness. In addition, the chip from the site of theft (from the broken window of the victim's house) in thickness corresponded to the other chips of the damaged window. Having convinced that the arguments put forward by L. and K. about the fact that the latter was not involved in the theft and its commission by another person was denied by a tactical operation in the proceedings "Inspection of the self-executing suspect", after which both defendants returned to their previous indications [9, p.148- 150].

Tactical Operation "Checking testimony". In the course of the trial, witnesses M. and K. gave the same testimony to the defendant P., as they agreed in advance, indications that they were three in the day of the murder, in the evening from 19 to 23, in the dwelling M., where they used one bottle of vodka, and then drank tea, watched a TV set (called two television programs and one movie). When he started questioning each of them, the prosecutor first of all raised the question: is a witness well aware of the events of that evening, whether he was in a state of intoxication, and therefore could remember something. Each of them declared (obviously, not wanting to compromise their pre-agreed indications with some uncertainty, doubts,

etc.) that is good and in all the details of memory "all that happened that evening (this answer made it impossible for them later to retreat while questioning in essence) .

Persons who gave false testimony did not assume that not only about the vodka and tea they were drinking, but that additionally each of them will be asked for 10-15 questions, in particular: 1) where they used drinks (in the kitchen, in the room); 2) As they were sitting, they settled down to each other at the table (who on the left, who was the case, who was sitting opposite); 3) where at that time was the wife of M. (which was not at home at that time, since she was a parent in another settlement); 4) who covered the table; 5) who brought vodka; 6) where it was purchased; 7) Which brand of vodka was dug; 8) from what they drank (glasses - which shape, size, glasses - round, granite); 9) what to eat; 10) where they took a snack; 11) who bought it; 12) where did you drink tea; 13) from what they drank (cups - what color, size, glasses); 14) with what you were drinking (with sugar, jam - which, candy - what); 15) What else was there for tea (pastries, cookies, gingerbreads), and so on..

Since the fact of the joint conspiracy stay in the apartment M. on the day of the murder was not, and in the invented version of them, only 3-5 positions were agreed (which was later clarified), the above details for each of them were unexpected and caught them by surprise. To say that they do not remember how they were sitting, from which they drank vodka, and then tea, etc., could not be questioned, because, first of all, they declared at the beginning of the interrogation that they all remember well, and secondly , were aware that not giving a clear answer to these "simplest" questions would mean ruining the whole thing (blasting the alibi). So, each of the interrogators had only one way out: to act impromptu, give impulsive answers to these questions during a direct questioning of the answer, hoping that others would not be asked about it, or that at least part of the phantasied answers would coincide. But this did not happen for obvious reasons, and concerted false testimonies were revealed [5, p.428].

In the trial, a tactical operation called "Checking testimony" was conducted. The model of the structure of this tactical operation may include the following elements: The tactical task of ensuring the verification of testimony. The purpose is



to confirm or refute the veracity of witness testimony. Participants - a judge, prosecutor-prosecutor, victim, defender, specialists whose knowledge is necessary for checking self-determination. Means of tactical operation: interrogation of the accused P., who stated that during the commission of the crime he was in the house of M., where with his friends M. and K. drunk alcoholic beverages with the maximum detail of the circumstances of the event; questioning witness M., who argued that the accused P. during his crime was in his home; questioning witness K., who argued that the accused P. during the commission of the crime was in the house of M.; An overview of the house of M. in order to verify the testimony of M. and K. questioning witnesses who can confirm the fact of finding M., K. and P. in the house of M.; simultaneous examination of previously questioned witnesses regarding revealed discrepancies in testimony (full rate); simultaneous interrogation of previously questioned accused and witnesses regarding discrepancies revealed; application of measures for ensuring criminal proceedings and conducting investigatory (search) actions during court proceedings (333 CPCs of Ukraine), etc.

Tactical Operation "Checking the alibi of the accused". The accused D., abandoning previous testimony, said the alibi. The prosecutor, in interrogation, explained in detail where the defendant was in the day of the crime, for what purpose, what he did, whom he had seen. Then, in order to verify these circumstances, he submitted a petition to the court to summon the defendants named to the court to testify, to demand documents confirming his presence on a particular day in the specified place. The questioned witnesses did not confirm the defendant's testimony, there were no documents at the enterprise confirming his presence on the said day in the workplace. Having made sure that all his statements are thoroughly checked and refuted, D. returned to the former true testimony.

In the trial, a tactical operation "Checking the alibi of the accused" was conducted. The model of the structure of this tactical operation may include the following elements: The tactical task of ensuring an alibi check of the accused. The purpose is to confirm or refute the alibi of the accused. Participants - a judge, a prosecutor-prosecutor, a victim, a defender, specialists whose knowledge is necessary

to verify the alibi of the accused. Means of tactical operation: interrogation of the accused D., who declared alibi; interrogating the persons referred by the applicant or who, in the circumstances of the case, can confirm or refute the alibi; questioning witnesses who can confirm the fact that the subject of alibi is acquainted with the person who confirms this alibi, and possibly the fact that the applicant is found in this person; requesting documents confirming the presence of an alibi subject on a particular day in the specified place; simultaneous interrogation of several participants in criminal proceedings (on-call rate) with respect to the discrepancies found; application of measures for ensuring criminal proceedings and conducting investigatory (search) actions during court proceedings (333 CPCs of Ukraine), etc.

Thus, under the tactical operation of court proceedings should be understood the system of judicial, organizational, technical and other actions, stipulated by the judicial situation and aimed at solving a separate tactical task during the trial. Such tasks are situationally conditioned by the circumstances that are to be set up, aimed at solving the interim aim of court proceedings, the solution of which requires the use of tactical means. In accordance with certain tactical tasks of the court proceedings, appropriate tactical operations are developed. Therefore, further study of the problems of tactical operations of court proceedings is one of the promising directions of scientific research of the theory of tactical operations related to the optimization of investigative and judicial activity.

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