

. Yu. Bululukov, Associate Professor of the Department of Criminalistics, Yaroslav Mudryi National Law University, Candidate of Legal Sciences, Docent
E-mail: auge@ukr.net

TACTICAL DECISIONS IN THEORY OF CRIMINALISTICS: PROBLEMS OF DECISION MAKING

Acceptance issue of tactical decisions in Criminalistics theory is considered. Stages of tactical decisions are defined, namely: a) analysis of information on different aspects of the process of establishing the circumstances of a criminal offense; b) setting the goal of tactical influence; c) the formulation of a task to be solved; d) determination of means and methods of solving the problem; e) election tactical decision on possible options; e) decision implementation.

Keywords: tactical decision; stages of making tactical decisions; volitional act.

In Criminalistics theory, the adoption of tactical decisions occupies an important place due to their significance in establishing the circumstances of a criminal offense. Together with other decisions taken by authorized agents, tactical decisions in the pre-trial investigation contribute to solving various tasks of “cognitive, heuristic, procedural-legal, tactical-psychological, organizational, material-technical character”¹. The need to make tactical decisions is due to the need to find the right information and often to receive it from people who cannot or do not want to provide it. At the same time, in Criminalistics, the problem of tactical decisions is considered fragmentary. Determining the structure of the decision-making process and its occurrence in the mental activity of the individual is treated differently by different scholars. The above determines a scientific search for determining the stages of tactical decision making and the place of this process in the person's mental activity, which is the purpose of the article.

Tactical decision making is the process of forming a solution that is optimal in a particular situation. In theory, the term “adoption”, covers the

¹ Zhuravel V. A. (2017) *Taktychni zavdannia ta mekhanizm yikh vyrishennia. Teoriia ta praktyka sudovoi ekspertyzy kryminalistyky : zb. nauk. pr.* [Tactical tasks and mechanism of their solving Theory and Practice of Forensic Science and Criminalistics Scientific paper collection], Kharkiv : Pravo, Issue 17. P. 11 [in Ukrainian],

period of intellectual activity of the subject of investigative (judicial) activity in relation to the construction of a tactical decision. We must accept the decision that is the final variant of the action of the person with the use of certain means and methods. The person decided to act in a certain way, that is, she made a decision. However, it is understandable that the definition of a subjective intention to act in a certain way is not yet a tactical solution, even if the person is confident that acting in this way will receive the desired result. In order for the decision to be considered necessary, the practical implementation of the theoretical model of the future tactical solution is considered necessary. The application of the term “future”, is justified, because when a theoretical model is transferred to a real action of a person, the resulting model of the decision may undergo certain changes. This can be explained by the fact that the theoretical construction of the solution and the process of its implementation, on the one hand, are different, and on the other hand, they are closely related. Changing one phenomenon entails a change of another. Such a conclusion can be made on the basis of understanding tactical decision as a complex volitional act of a person. The integrity of the volitional act makes it possible to assert the integrity of its generating component — tactical decision.

As you know, all actions in the criminal proceedings are aimed at establishing the circumstances of a criminal offense. Such actions require voluntary efforts, which always end with the adoption of a certain decision. The will of the person is firstly directed at finding a solution (its formation), and then on its implementation¹.

Guided by the achievement of a certain goal volitional act ends after the necessary actions. The theoretically formed decision can also achieve its goal only after implementation. However, at the stage of implementation, there may be problems that have different effects on the adoption of the theoretical solution. Such an effect is due to the need to use the theoretical model in accordance with the conditions of a real investigative situation that has signs of dynamism². Implementation, which is the last stage of a tactical decision, must translate into reality the theoretical construction of a solution. If the decision is taken too long, whether the implementation of the decision is delayed, or the situation is rapidly changing, the connection between the theoretically constructed solutions and the mechanism of its implementation is violated. In this case, there may be a problem situation that will be required, or a change in the mechanism for implementing the solution, or changes in its

¹ Uznadze D. N. (2004) *Obshhaja psihologija / per. s gruzinskogo E. Sh. Chomahidze; pod red.*

I. V. Imedadze. [General psychology / translated from Georgian E. Sh. Chomahidze edited by I. V. Imedadze]. Moscow : Smysl SPb. : Piter, p. 130 [in Ukrainian].

² Kopilov I. A. (1988) *Sledstvennaja situacija takticheskoe reshenie : ucheb posobie.* [Investigation situation and tactical decision: tutorial], Volgograd: VSH MVD SSSR, p. 16 [in Russian].

theoretical model. This suggests that a particular tactical decision model may not get the status of “tactical”, due to the impossibility of its practical implementation. The above leads to the conclusion that the tactical decision covers the actions of the subject of the investigative (judicial) activity both in the process of theoretical construction of the decision, and in its practical implementation. This approach is true because the constructed theoretical model of the future tactical solution cannot exist in isolation without its practical implementation. On the other hand, only the solution that is theoretically constructed can be realized. The inextricable link between the theoretical model of the solution and its implementation indicates that the term “adoption of a tactical solution”, is valid for determining the process as a whole. Selection of the solution can be realized only as a certain and necessary stage.

In the sequence of tactical decision making it is possible to identify certain components that determine the individual stages of the process. Parallels that can be drawn between them and the stages of a volitional act of a person can be called as stages of tactical decision making. Based on the definition of a tactical solution, these stages of adoption are logically interconnected between the stages of mental activity in shaping the decision, culminating in its practical implementation. All stages of the decision, including its implementation, are reasonably part of the so-called sequence of mental actions of the person. On the one hand, this sequence is determined by the will of the person, and on the other — sources of information about the committed offense and the possibility of their use. The stage of the said activity is an objective factor due to the need to identify and implement a tactical solution. The process of knowing the circumstances of the committed offense, which accompanies the preparation of the theoretical construction of the decision, and then its implementation, requires the definition of its sequence, with an emphasis on the practical side of this problem. At the same time, as noted earlier, we rely on the definition of tactical decision as a complex voluntary act of the subject of investigative (judicial) activity. This allows to assert a certain coincidence of the stages of decision-making and stages of a voluntary act of a person. Consideration of the stages of the tactical decision in accordance with the stages of a volitional act of a person determines the mental activity of the person in relation to the purpose of her in achieving the goal.

Voluntary actions of the person ending with the tactical decision is the result of one goal, the achievement of which is aimed at the will and act of tactical decision. Observable differences relate both to the peculiarities of the process of volitional processes, and to the peculiarities of the processes of the formation of a tactical solution. Voluntary activity of the person is a shell in the middle of which is taken (formed) and implemented a tactical decision. It

is impossible to imagine a tactical decision without volitional action (activity). Emerging at the beginning of a volitional act, a tactical decision is filled with content and ends with the end of the volitional act. Decision should be its implementation, without the volition will be incomplete¹. This connection, which exists between a decision and a volitional act, is so strong that it does not allow separating one phenomenon from another. So, being a complex volitional act, a tactical decision produces stages of acceptance, which in basic details coincide with the stages of the willful act of man.

In forensic literature, scientists who studied the problem of tactical decision making, the structure of the adoption of these solutions complete the theoretical construction solution. These researches include the works of R. S. Belkin, MV Baranova, O. Yu. Golovin, V. A. Zhuravlya, O. S. Knyazkova, I. M. Luzgina, O. A. Chebumova, E. Shuklin, S. Yu. Yakushin². However, the structure of the tactical decision-making process is largely due to the structure of the tactical decision itself, its content³. It allows to assign to this list a number of scientists that define a tactical decision as a certain theoretical construction, not including its structure, the stage of implementation⁴.

Emphasizing the problem under study, it is necessary to indicate some inertia in the interpretation of the concept of “tactical decision”, in the forensic

¹ Rubinshtein S. L. *Osnovy obshchej psichologii* (2002) [The essentials of general psychology]. 2nd Ed. SPb. : Piter, p. 573 [in Russian].

² Belkin R. R. (1997) *Kurs kriminalistiki: v 3 t. T. 3: Kriminalisticheskie sredstva, priemy rekomendacii* [Criminalistics course: Composed of 3 vol. vol. 3: Forensic means, methods and recommendations], Moscow : Yourist, p. 176 [in Russian]; Golovin A. Yu., Baranov M. V. (2015) *Struktura mehanizma reshenija zadach rassledovanija prestuplenij. Izvestija TulGU. Jekonomicheskie juridi-cheskie nauki* [Structure of the mechanism for solving the problems of the investigation of crimes. Izvesia TulGU. Economic and Legal Sciences]. 4-2. P. 21 [in Russian]; (iolovin A. Yu. (2002) *Kriminalisticheskaya sistematika : monografiya* [Forensic systematics : monograph.]. Moscow : LeksEst, p. 256, Zhuravel V. A. Papers mentioned above. S. 16-17; Knyazkov A. S. (2013) *Analiticheskie taktiko-kriminalisticheskie sredstva dosudebnogo proizvodstva: monografiya* [Analytical tactical and criminalistic means of pre-trial investigation : monograph]. Tomsk Publishing house Tomsk State University, p. 139-140 [in Ukrainian]; The same author. (2014) *Taktiko-kriminalisticheskie sredstva dosudebnogo proizvodstva : dis. ... d-ra jurid. nauk*: [Analytical tactical and criminalistic means of pre-trial investigation : Doctoral thesis]: spec. 12.00.12 “Criminalistics, Forensic science activity, operative-search activity”, Tomsk, p. 91 [in Russian]; Luzgin I. M. (1981) *Modelirovanie pri rassledovanii prestuplenij* [Modeling while crime investigation]. Moscow : Yurid. lit., p. 93 [in Russian]; Cheburenkov A. A. (2005) *Teoreticheskie osnovy kriminalisticheskoi taktiki prikladnye aspekty ih realizacii v rassledovanii prestuplenij*. (Theoretical foundations of forensic tactics and applied aspects of their implementation in the investigation of crimes). Ruzayevka : Ruzayevskiy pechatnik, p. 151-160 [in Russian]; Shuklin A. E. (2012) *Osobennosti prinyatiya informacionnykh takticheskikh reshenij v slozhnykh sledstvennykh situatsiyah: avto-ref. dis. ... kand. jurid. nauk* [Features of making information and tactical decisions in complex investigative situations : extended abstract of candidate thesis, spec. 12.00.09 “Criminal proceedings, forensics; operative-search activity”]. Yekaterinburg, p. 11 [in Russian]; Yakushin S. Yu. (2013) *Tehnologiya prinyatiya sledovatelem optimalnykh takticheskikh reshenij. Uch. zapiski Kazan, un-lit. Gumanitarnye nauki* [Technology of making an optimal tactical decision by an investigator. Scientific notes of Kazan Federal University. Humanities]. Kazan, vol. 155, p. 252 [in Russian].

³ Yakushin S. Yu. Papers mentioned above, p. 249.

⁴ These indicators include: V. M. Bykov, A. V. Dulov, Ya. Drapkin, I. O. Kopylov, Yu. V. Novik, S. I. Tsvetkov, V. Yu. Shepitko, G. S. Shostak, M. G. Shurukhunov and others.

literature in accordance with the definition of “solution”, in encyclopedic dictionaries. The concept of “tactical decision”, is filled with the specific content of criminal procedural activities, aimed at establishing the circumstances of the criminal offense and the person who committed it. Tactical decision is an important factor that adds dynamics to this process, and therefore, for a proper understanding of the structure of tactical decision-making, it is necessary to go beyond the traditional definition of the concept of a solution. It is important that if we consider that tactical decision is a person will act, then it is necessary to be consistent and to note that the will act ends with the implementation of the decision¹. This allows us to conclude that a volitional act is the intellectual-volitional cover of a tactical decision that determines the sequence of its adoption.

In determining the structure of the tactical decision, we proceeded from the typical scheme of mental activity of the subject of investigative (judicial) activity in determining the circumstances of a particular event. In our opinion, the structure of tactical decision making consists of certain stages. Such stages are: 1) analysis of information on different aspects of the process of establishing the circumstances of a criminal offense; 2) setting the goal of tactical influence; 3) the formulation of the task to be solved; 4) determination of means and methods of solving the problem; 5) election tactical decision of possible options; 6) implementation of the solution. Defining in this sense the stages of tactical decision making allows us to see, first of all, the sequence of mental activity of the person in constructing the theoretical construction of the solution, and then its connection with the investigative (judicial) activity. The latter occupies an important place in the construction of the sequence of acceptance and definition of each of the specified stages.

Consider each stage of making tactical decisions.

At the first stage, the subject of the investigative (judicial) activity, which takes tactical decision, analyzes the available information regarding the commission of a criminal offense. Information that is subject to analysis can be conditionally divided into: a) information on how to prepare, execute and conceal the crime; his motive; the purpose and subjective attitude of the person to commit a criminal offense; b) information on the behavior of the suspect during the commission of an offense and during pre-trial investigation and trial; c) information on other persons (relatives, acquaintances of the suspect, etc.) that counteract the establishment of the circumstances of the offense; d) information regarding the available time, means and methods necessary for the adoption and implementation of the decision; e) information about the forecasted result of the decision, etc. The analysis of the above

information allows to outline the purpose, the achievement of which will give the opportunity to obtain new data in the proceedings.

The division of information into species may be carried out depending on the subject of investigative (judicial) activity, taking tactical decision. Most tactical decisions are made by those who carry out pre-trial investigation. It is at this stage of criminal proceedings that the need for tactical decisions is greatest. The information that is being analyzed characterizes the existing investigation situation and its volume is determined by the significance of the conclusion regarding the purpose of implementing tactical influence. This stage in the person's intellectual activity is aimed at identifying possible directions for obtaining new information on the commission of an offense. The importance of this stage is to determine the sources of evidence, their systematization on the significance and consistency of use. At this stage, the analysis of general information can narrow the directions of the implementation of tactical influence and close approach to the goal of tactical influence.

Significantly fewer tactical decisions are made by investigating judges, victims, suspects, defenders and other actors. The specified category of persons at this stage carries out the analysis of information concerning certain situations of investigation and actions of the bodies of pre-trial investigation. As a rule, individual cases of obtaining information by an investigator, a detective, and the circumstances of a crime, allowing to obtain new evidence information, are subject to analysis.

At the second stage of tactical decision making, the goal setting is tactical influence. The analysis of the available information about the crime distinguishes the goals, the achievement of which is a priority at a certain point in pre-trial investigation or trial. The choice of the goal that can be achieved by tactical effect on a particular object is an important stage in making tactical decisions. The chosen goal is the basis for making tactical decisions. By penetrating the entire decision-making process, the goal is the dominant factor in determining the content of other stages. Despite the fact that in the sequence of tactical decision making at the stage of setting the goal are others, all of them are subordinate and function to achieve it.

Analysis of information about a crime, a vision of the possibility of obtaining new information about the circumstances of his commission leads to the person's drive to act in a certain way. This is due to various factors, among which the duties of the person acquire an important significance, in accordance with its procedural status, as well as professional honor, which internally motivates it to solve emerging tasks and make tactical decisions. On the other hand, the goal setting is the vision of the object of tactical influence, the means and methods of its commission, as well as the final result

of tactical decision. That is, setting the goal when making a tactical decision helps to determine the task to be solved.

At the third stage of the tactical decision, the wording of the problem to be solved is carried out. This task is specified depending on the content of the investigative situation. With regard to the goal, the nature of the task can be complex or simple¹. For example, tasks of complex nature include tasks of investigative (search) systems, and tasks that have a simple character-the task of a certain investigative (investigative) action, and so on. In this case, it is about how accurately it is possible to predict the consequences of tactical decision-making, to clearly define its purpose in obtaining the necessary information. Communication of the set goal and task is traced in the fact that the objectives are formulated after the goal setting. The purpose produces a task and this is evidenced by the definition of the problem in the reference literature². Separating the formation of tasks as an element in the structure of tactical decision making is due to their significance in this process. If the goal of a tactical decision is a vision of a definite result, then the task involves a mechanism for its achievement.

The formulation of a task is always associated with the object of tactical influence. Information about the object of tactical influence occupies an important place in the structure of the specified process. This can be explained by the fact that the object of tactical influence may be the source of new information regarding the circumstances of the commission of the offense. For example, the object is the person of the suspect, whose interrogation allows you to get information about the crime. However, most objects of tactical influence are not sources of new information, but they in one way or another contribute to its receipt. An example can be the planning of activities or actions to prepare investigative (search) actions.

The multivariate directions of tactical influence include a large number of objects that can contribute to new information on the offense. Depending on the objective of tactical influence among the main objects of tactical decisions can be called: persons, carriers of information about the crime; investigative situation; activity planning; actions related to the organization

¹ Belkin R. S. *Ocherki kriminalisticheskoy taktiki* [Essays on forensic tactics]. Moscow, s. 91; [in Russian]. Garant N. L. (1973) *Harakteristika sledstvennykh zadach psihologicheskoy mekhanizmy ih resheniya: avtoref. dis. ... kand. yurid. nauk* [Extended abstract of candidate thesis]: spec. 12.00.09 "Criminal proceedings; judicial system; prosecutor's supervision; criminalistics", Moscow, p. 6 [in Russian]; Luzgin M. (1990) *Kriminalisticheskie zadachi ih mesto v ocenke ishodnykh sledstvennykh situacij. Aktualnye voprosy ispolzovaniya dostizhenij nauki tehniki v rassledovanii prestuplenij organami vnutrennih del.* [Forensic tasks and their place in the assessment of initial investigative situations. Actual issues of using the achievements of science and technology in the investigation of crimes by the bodies of internal affairs]. Moscow, p. 66 [in Russian].

² *Slovar psihologa-praktika* (2005) [Dictionary of practical psychologist] S. Yu. Golovin. 2nd ed. revised supplemented. Minsk: Harvest, p. 205 [in Russian]; *Psihologiya: slovar* (1990) [Psychology: Dictionary] edited by A. V. Petrgovsky, M. G. Yaroshevsky. 2nd ed. revised supplemented. Moscow : Politizdat, p. 119 [in Russian].

of the preparation and conduct of investigative (search) action; actions related to the organization of the preparation and conduct of the system of investigative (search) actions; actions related to the organization of preparation and conduct of tactical operations, etc.

At the fourth stage of the tactical decision, the means and methods for solving the problem are determined. In the mechanism of achieving the goal set in the task, the means and methods of implementing tactical effects on a particular object are individual in each particular case. Isolation of them into an independent stage of the structure of tactical decision-making and a certain separation from the task is determined by their significance in achieving the goal. Means and methods of tactical influence are determined by the object of influence and the onset of possible consequences in the application of certain means and methods. The dependence of the effectiveness of the tactical solution on individual means and methods of implementing tactical influence is the justification for distinguishing this step in the sequence of tactical decision making.

Properly selected means and methods are to get the desired result, which is the purpose of the tactical decision. The determining factor for their choice is the effectiveness in solving the problem. In our opinion, the means of tactical influence can be attributed: tactical reception; system of tactical receptions; investigative (wanted) action; system of investigation (search) actions; tactical operation and others. The choice of means of tactical influence depends on the goals that the person making the tactical decision wants to achieve. If a certain investigative (wanted) action is able to change the investigative situation, a decision is made on its conduct. In this case, it (investigative (wanted) action) is a means of tactical influence. Similarly, it is necessary to consider the system of investigation (search) actions and tactical operations, which are also means of tactical influence when making tactical decisions aimed at achieving the corresponding goals in the proceedings. Above mentioned means of tactical influence when used are specified by methods of tactical influence, which can be attributed: time, place, sequence, variability, consistency, complexity and frequency of the use of means of tactical influence.

At the fifth stage of the tactical decision, its final variant is determined. The choice of the correct (optimal) solution is carried out using the chosen method. In forensic literature, the view is expressed that the methods of making tactical decisions, as well as decisions themselves, depend on the complexity of the task to be solved¹. In this context, known methods of solving problems in literature, namely: the method of transformation; method of allocation of signs; decomposition method; method of analogies². Yes,

¹ Belkin R. S. *Kurs kriminalistiki* [Criminalistics course] : Composed of 3 vol. vol. 3. P. 176 [in Russian].

² *Ibidem*, p. 177-178.

indeed, the problem is solved by the application of certain methods, but at the same time these methods help to select the optimal and effective tactical solution. In our opinion, the methods of choosing a tactical solution is much larger and the use of a particular method is related to the complexity of the task and its specificity. For example, the task of finding a suspect; problems arising in the process of implementing a tactical combination; tasks that arise during the implementation of a tactical operation, etc. In the process of problem analysis, the method of its solution is chosen, which is also a method of choosing the final solution.

This stage in the acceptance mechanism is the result of the formation of the theoretical construction of a tactical solution. As a rule, there are several variants (alternatives) of solutions, from which one is selected, the most effective.

At the sixth stage of tactical decision making, the theoretical design of a solution (mental model) becomes a real act of the subject of investigative (judicial) activity. The sixth stage is the only one that is accessible to others. The implementation of tactical decisions — is the use of selected means and methods for the implementation of tactical influence and the solution of the problem and achieve the goal. At this stage, tactical decisions acquire their final form, which allows us to assess the correctness: the election of means and methods of tactical influence; their use; the sequence of their application; degree of achievement of the set goal and others.

The indicated separation of the sequence of tactical decision making on the stages is somewhat arbitrary, since the decision-making process until the moment of its implementation is carried out by the individual mentally. However, despite this fact, when deciding in a fast-moving situation, when it is impossible to focus attention on each of the stages of adoption, this sequence remains unchanged. An exception is the decision-making situation in the shortest time, when certain stages of acceptance are not conceived by a person in the absence of time. The probable passage of some of the components of the tactical decision is offset by the experience of the decision maker, his ability to reflexive thinking.

DOI <https://doi.org/10.32353/khrife.2018.10>
UDC 343.98

M. V. Kapustina, Associate professor of the Department of Criminalistics of the Yaroslav Mudryi National Law University, Candidate of Legal Sciences, Docent
E-mail: dniprondise@ukr.net marietta-k@ukr.net

ORGANIZATIONAL AND LEGAL PROBLEMS OF OVERVIEW OF DOCUMENTS IN THE INVESTIGATION OF YATROGENIC CRIMES

The organizational and legal problems of the review of documents in the investigation of crimes committed in the field of medical care are highlighted,