

LAW AND INTERNATIONAL LAW

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**MEANS OF CRIMINALISTIC TAKTICS:
MODERN UNDERSTANDING OF THE CONCEPT AND SOME
DISCUSSION PROBLEMS**

***Abstract.** The article is devoted to the study of current problems means of criminalistic tactics, their concept and system. The modern understanding of the concept of means of criminalistic tactics is considered, its definition taking into account traditional and innovative approaches in criminalistic science is offered. The main innovative directions of research and problems of use of means of criminalistic tactics in law enforcement activity which provide its efficiency and effectiveness are defined. It's substantiated that one of the most important tasks of further development of criminalistics is to improve the existing system of criminalistic tactics in view of the emergence, development and current state of some innovative areas of criminalistics and expand the application of criminalistic tactics in various legal practices (investigative, judicial, prosecutorial, lawyer, search, detective, etc.). Research of new means of criminalistic tactics largely determines the innovative directions of modern criminalistic research in this field of knowledge.*

***Keywords:** criminalistic tactics, means of criminalistic tactics, innovations in criminalistic tactics, system of means of criminalistic tactics, limits of application of criminalistic tactics, new means of criminalistic tactics.*

Introduction. Today the tendency of strengthening of practical orientation of criminalistic developments of innovative products, its pragmatic orientation on the decision of important practical problems as criminalistics is a powerful source of

effective changes, increase of quality and efficiency of practical activity, its optimization acquires special value. It's no coincidence that the "father of criminalistics", Austrian scientist and forensic investigator Hans Gross, as the constant goal of criminalistics called the "practical" goal of criminalistics as an applied science of the realities of criminal law, noting that criminalistics by nature begins only where established, in what way crimes are committed, how to investigate these ways and to reveal them, what were the motives for committing such, what tasks were set – neither criminal law nor process tells us all this, it is a subject of criminalistics [3, p. 8].

As we can see, increasing the practical value of research should primarily be aimed at creating appropriate scientific and methodological support for the development and use of effective and efficient tools of criminalistic tactics, intensification of activities to create innovative criminalistic products of tactical-criminalistic direction, their implementation and application in practice of law enforcement agencies, significantly optimizing such work. According to V. Yu. Shepitko, the effectiveness of the use of criminalistic tactics involves their improvement, implementation of new developments, scientific substantiation [14, p. 174]. In this regard, the remark of R.S. Belkin is appropriate, who emphasize that criminalistics dramatically increases its scientific potential and increases practical efficiency in the conditions of "information explosion" [2, p. 17, 68].

Given the above, today the problems of studying trends in criminalistic tactics, its modern understanding and prospects for further research, development of innovative areas of development, activation of opportunities to create innovative products in this field of criminalistics, research on the concept of criminalistic tactics, its systems and a number other issues that are currently underdeveloped in criminalistics, unexplored and need in-depth analysis and coverage.

Results and discussion. A significant contribution to the study of criminalistic tactics was made by well-known criminalistic scientists, who turned to the development and study of certain theoretical and methodological problems of criminalistic tactics. Some attention was paid directly to the study of criminalistic problems of criminalistic tactics (V.P. Bakhin, M.V. Saltevsky, V.V. Tishchenko,



V. Yu. Shepitko, etc.). At the same time, the definition of the concept of criminalistic tactics, consideration of their system and role in the fight against crime in the modern conditions of the adversarial process today remain insufficiently covered and require scientific justification. The relevance of the research topic is determined by the need to analyze modern trends and scientific approaches to modern understanding of the concept of criminalistic tactics, taking into account traditional and innovative approaches in criminalistic science.

Today, the subject of purposeful and in-depth study is the activity of the investigator and other subjects of criminal proceedings in the modern conditions of the adversarial process and counteraction to the performance of each of them of its procedural function. For such real conditions and needs of practice the corresponding tactical means of work of the investigator, the detective, the lawyer, the prosecutor, the judge (court) and other participants of process which make "tactical arsenal" of their activity are developed. As rightly noted by I.I. Kohutysh systematic, in-depth study of tactics as an activity aimed at preventing and overcoming opposition in the procedural investigation of crimes, provide an opportunity to solve important problems of criminal justice through the use of effective *means of criminalistic tactics*. The solution of these problems is devoted to the study of the theory of investigative situations, as well as promising work in the field of tactical operations, which are considered as a set of investigative actions, tactic admission and operational measures aimed at achieving a certain local task of crime investigation (for example, tactical operations "hot arrest", "alibi check", "check of testimony of a person who has pleaded guilty to a crime", etc.) [5, p. 388-389].

One of the urgent tasks of theoretical development of the use of tactical tools is to solve the problem of the conceptual apparatus. After all, at the beginning of any scientific research it is necessary to determine the meaning, place and relationship of the studied phenomenon (category), to understand the general theoretical provisions, to formulate the initial concepts and only then directly proceed to the scientific development of the problem. Ignoring this rule leads only to confusion, and sometimes forces to "reject" already existing experience of theoretical and applied researches and

to begin consideration of these or those questions literally from the beginning, from the first principles [1, p. 3]. In this aspect, clearly, significant scientific and practical interest is in-depth study of the concept of "criminalistic tactics", its modern understanding, structure and system, the ratio of "particles" and components that combine in it, their impact on each other, their role and appointments, etc.

Various terms are used to denote tactical means in the special literature and practice of criminal proceedings. They are often called "tactical and criminalistic tools" (O.O. Exkharhopoulo, O.S. Knyazkov), "tactical means" (S. Yu. Yakushin), "organizational and tactical means" (V.Yu. Shepitko, V.A. Zhuravel), "criminalistic tools" (V.A. Zhuravel), "tactical means of investigation" (V.V. Tishchenko, I.K. Hryshko), "means of criminalistic tactics" (A.V. Dulov, V.O. Konovalova, M.V. Saltevsky, V.Yu. Shepitko, etc.), etc. It's seen that in most cases there are different approaches to the interpretation of the concepts under consideration, some discussions about their essence and content. In this regard, O. Yu. Golovin notes that, unfortunately, there is no unambiguous understanding of the essence of the tactical means under consideration so far, just as there is no single direction of their systematization [4, p. 215].

Thus, as we see, the study and analysis of criminalistic literature indicates the existence of different scientific approaches to understanding the means of criminalistic tactics. The concept of "criminalistic tactics", which is used in the literature, is a collective nature, reflecting the complexity and versatility of the development and use of means to achieve the objectives of investigation and trial. This concept denotes any means, actions, measures, regardless of whether they have an intellectual-subject or intellectual-activity essence, whether they are considered as ways of behavior of the subjects of criminal proceedings of the investigator) and what is the mechanism of their influence, etc. [10, p. 59-68]. It should be noted that such a broad understanding of the content of means of criminal investigation does not contradict the semantic meaning of the word "means", which is often used as synonyms for the words "reception", "method of action", "method", etc., which is often leads to different understandings and interpretations of criminalistic tactics, their use in different meanings [12]. Therefore,



the concept of "means of criminalistic tactics" is complex and multifunctional, it has a collective nature and in essence is an optimal set of interrelated actions and techniques that are aimed at effectively solving tactical (local, intermediate) problems that arise in certain investigative situations.

In our opinion, *the means of criminalistic tactics* – is the optimal set of interrelated actions and techniques of tactical and criminalistic direction, which are embodied in tactics, tactical recommendations, tactics of procedural and non-procedural actions, tactical combinations and operations used by the investigator, detective, prosecutor, operative, lawyer, judge (court) in their activities and aimed at ensuring the most effective solution of tactical (intermediate) tasks that arise in certain investigative situations, in order to improve the quality and effectiveness of criminal proceedings and its optimization.

An important area of improving the provisions of criminalistic tactics is the development of a system of criminalistic tactics. As noted by V.Yu. Shepitko, the systemic nature of criminalistic tactics can be traced in its natural connections, the interdependence of certain structural elements – tactic admission, combinations (systems) or tactical operations, the mechanism of their implementation. Today in criminalistic tactics there are a lot of controversial provisions and concepts, there are pseudo-theories, speculative constructions are offered [16, p. 3, 5]. Investigating these issues, V.Yu. Shepitko and V.A. Zhuravel correctly emphasizes that the system of tactical means should be understood as a set of tactical means (techniques, recommendations) in their various combinations, which already include the tactics of investigative action and aimed at solving various problems in situations that arise [15, p. 187]. Therefore, the definition of the main areas of improvement of criminalistic tactics should be based on ideas about the system of criminalistic tactics, in which various tools are designed to reflect the content of its subject and meet the needs of law enforcement practice in combating crime and justice, optimize their application.

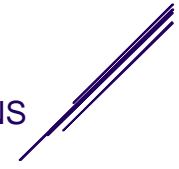
In the criminalistic literature there are different approaches to defining the system of criminalistic tactics. So, V.S. Kuzmichev and G.I. Prokopenko propose to consider the following components in the system of criminalistic tactics:

- a) procedural (investigative actions, operational and investigative measures, selection of explanations, requesting documents, appointment of departmental audit);
- b) non-procedural (tactical admission, tactical decision, tactical combination and tactical operation) [8, p. 184].

As you can see, this approach is debatable and needs further justification. In our opinion, first of all, the erroneousness of such a division is that these scholars proposed for consideration non-procedural means of criminalistic tactics do not cover the entire system of possible tactical means, leaving out the tactical recommendation; and a system of tactics aimed at solving individual tactical tasks within a single procedural action (investigative, judicial, unspoken investigative (search) action, etc.) – a tactical combination; and a system of procedural and non-procedural actions and measures aimed at solving certain tactical tasks in criminal proceedings, taking into account the stages of investigation and trial, the investigative (judicial) situation – the tactical operation, etc.

In addition, as we see, this approach raises some objections to the inclusion of these scientists procedural actions, as they indicate "investigative actions, operational and investigative measures, selection of explanations, requesting documents, appointment of departmental audit) investigative (search) actions" and tactical and criminalistic tools in general. It is obvious that all such means available in criminalistics and in practice (tactic admission, tactical recommendations, tactical combinations, tactical operations, etc. are realized within the limits of carrying out procedural actions (investigative, judicial, unspoken investigative (search) action, etc.). Moreover, the procedural actions themselves cannot be considered as a means of criminalistic tactics, because here we can only talk about the tactics of their realization and implementation, which is a kind of means of criminalistic tactics.

Some scholars suggest considering as "tactical means of criminalistic tactics" such "tools" that are not always unfounded, and sometimes even contradict the modern understanding of criminalistic tactics. So, J.W. Udovenko claims that recently criminalistic tactics have been supplemented by such new tactical means as "tactical operation", "tactical combination", "tactical decision", "investigative situation",



"psychological ambush", "investigative cunning", etc., which enrich the language and the content of criminalistic tactics as a branch of criminalistic knowledge [9, p. 133]. In our opinion, the scientist's attribution to new tactical means, as the author argues, "psychological ambush" and "investigative cunning" is unfounded and contrary to the modern understanding of criminalistic tactics, so to distinguish them in the system of criminalistic tactics is impractical and erroneous. In addition, as noted by I.I. Kohutysh, research in the field of criminalistic tactics is also characterized by the attention of scientists to the development of "non-traditional methods of investigation": the possibility of using in the investigation of the theory and practice of biorhythmology, hypnology, polygraph, etc. [5, p. 339]. In our opinion, such proposals are quite debatable and testify to their problematic and inadmissible application in the theory and practice of crime investigation, including biorhythmology and hypnology, noting the unscientific and unfounded use of such "pseudo-tools" in the practice of pre-trial investigation and trial.

In our opinion, the research of this problem by V. Yu. Shepitko deserves attention [16], which to the means of criminalistic tactics includes: a) tactical reception as a way of carrying out procedural action, aimed at achieving its goal; b) tactical recommendation – scientifically substantiated and tested advice on the choice and application of tools, techniques and forms of behavior; c) systems (subsystem) of tactics – an ordered set of interconnected and interdependent techniques that have a target orientation in the process of its implementation (the system of tactics is called a tactical combination); d) tactics of investigative (judicial, operational-search) action, covering the entire typical tactical complex of its possible implementation, realization; e) a system of investigative or other actions (tactical operation) aimed at performing the task of investigation in the relevant investigative situation [6, p. 133].

In the process of questioning and interviewing investigators from the Prosecutor's Office, the Ministry of Internal Affairs and the Security Service of Ukraine, we found out: what means of criminalistic tactics are most often used in practice. The results are as follows: tactical reception – 86%; tactical recommendation – 61.4%; systems (subsystem) of tactics (tactical combination) – 64%; tactics of

investigative (judicial, operational and investigative) action – 93.4%; e) system of investigative or other actions (tactical operation) – 56.6% [11, p. 191; 13]. The obtained data allow us to conclude that practitioners among the means of criminalistic tactics most often use the tactics of investigative (judicial) action.

In this regard, a certain scientific interest is the point of view of scientists who emphasize that a certain foundation, "part" on which criminalistic tactics are based is the tactics of investigative (judicial, operational and investigative) action, covering the entire typical tactical complex of its possible implementation, realization [6, p. 133]. Therefore, it is important to identify and study such tactical tools as tactics of investigative (search), unspoken investigative (search), judicial action, operational-investigative, security measures, which can be used both individually and in combination, aimed at optimizing and streamlining criminal proceedings.

In view of the above, the system of means of criminalistic tactics includes:

1) *tactical reception* as a way of carrying out procedural action aimed at achieving its goal;

2) *tactical recommendation* – scientifically substantiated and tested in practice advice on the choice and application of tools, techniques and forms of behavior;

3) *tactical decision* - the choice of the purpose of tactical influence on the criminalistic situation as a whole or its individual components, the course and results of the process of investigation and trial and its elements and the definition of methods, techniques and means to achieve this goal;

4) *tactical combination* as a system (subsystem) of tactical techniques, an ordered set of interconnected and interdependent techniques that have a target orientation in the process of its implementation;

5) *tactical operation* as a system of procedural and non-procedural actions (measures), which is aimed at solving a separate (intermediate) tactical task of the investigation in the relevant investigative or judicial situation;

6) tactics of investigative (search) action, covering the entire typical tactical complex of its possible implementation, realization;

7) tactics of unspoken investigative (search) action;

8) *tactics of judicial action*; 9) *tactics of interaction*.

In the system of criminalistic tactics, in our opinion, it is necessary to highlight the *tactics of interaction*, which is the activity of the investigator to establish communication and coordinated measures to address the tactical tasks of the investigation with officials of judicial, law enforcement and other government agencies, individual citizens. Such a process of interaction is also carried out between the investigator and other participants in the criminal proceedings: the victim and his legal representative, the suspect, his representative and defense counsel, witness, specialist and expert. Interaction can be constructive if the procedural, professional and personal interests of its participants coincide. At the same time, such interaction may have a conflicting nature, if its participants have opposite, significantly different procedural and personal interests and tasks. There is also a mixed type of interaction in conditions where the interests of the participants coincide in part. Depending on the conditions of interaction, the investigator (detective) chooses the most appropriate tactics for establishing cooperation, to eliminate the causes of the conflict and effectively establish the essence of the criminally relevant event and its circumstances [7, p. 246].

Thus, the interaction of the investigator with the operational units and other entities in criminal proceedings is a system of joint functioning, which is aimed at solving the tactical tasks of pre-trial investigation and trial and its purpose - to establish the objective truth. Based on this, all the tactical tools of the subjects of the use of criminalistic tactics, including tactics of interaction, it is natural and determines the behavior of the investigator (detective) and other subjects of interaction during the investigation and trial.

Conclusions. Thus, in modern realities, a comprehensive approach to the study of the problems of the use of criminalistic tactics in various activities, both law enforcement and criminal, is quite relevant. Obviously, it is a question of application of system-structural, activity, technological and other approaches to studying of prospects and possibilities of expansion of limits of application of criminalistic knowledge and means of criminalistic tactics in modern conditions. At the same time,

it is not necessary to limit oneself to the field of pre-trial investigation, as traditionally in many criminalistic sources this issue is considered, which, in our opinion, is incorrect, and today needs clarification, revision of such approaches and further research on this issue. As can be seen, these problematic issues often largely determine the promising innovative areas of criminalistic research in this area of knowledge. In this regard, an important task for the further development of criminalistics is to improve the concept and system of criminalistic tactics in view of the emergence, development and current state of certain innovative areas of this branch of criminalistics.

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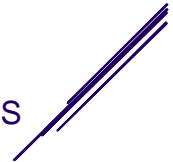
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