

Наталія ПАВЛОВА, Богдан АНТРОПОВ
**ПРОБЛЕМАТИКА ДОПИТУ МАЛОЛІТНЬОЇ ТА НЕПОВНОЛІТНЬОЇ ОСОБИ,
ЯКА ПОСТРАЖДАЛА ВІД КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ**

Анотація. У статті здійснюється дослідження слідчої (розшукової) дії – допиту. Дослідження ґрунтується на статистичних даних, виданнях сучасних вчених, які розглядали питання проблематики допиту малолітньої та неповнолітньої особи у кримінальному провадженні.

На підставі наукових думок розкривається сучасна проблематика проведення допиту малолітньої та неповнолітньої особи. Надаються рекомендації щодо встановлення психологічного контакту в умовах, коли допитувана особа надає не вірну або не правдиву інформацію, або відмовляється надавати показання через страх помсти з боку кривдника. Виокремлено важливість застосування додаткових сил під час допиту (запрошення спеціалістів різних напрямів), які мають психологічний і тактичний аспект.

Ключові слова: *малолітня особа, допит, неповнолітня особа, слідчий, слідча (розшукова) дія.*

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**CRIMINOLOGICAL ANALYSIS OF THE SITUATION AND TRACE PICTURE IN
THE INVESTIGATION OF INVOLVEMENT OF MINORS IN ILLEGAL
ACTIVITIES**

Abstract. Forensic analysis of the situation and trace picture in the investigation of involvement of minors in illegal activities. The scientific article is devoted to the study of some aspects of the forensic characteristics of involving minors in illegal activities. The situation of commission and the trace picture of a criminal offense are considered as an element of the forensic characteristics of the specified illegal act, as well as their connection with other elements.

It is noted that the trace picture of the commission of a criminal offense is a scientific category, the study of which is necessary in the study of any forensic characteristics. In turn, the involvement of minors in illegal activities is also characterized by separate specific features that are reflected in the trace array left after the commission of a criminal offense.

Keywords: *minor, illegal activity, forensic characteristics, investigation, involvement, situation, trace picture, criminal offense.*

Relevance of the study. The European integration processes taking place in Ukraine make it necessary to reform not only certain structures and organizations, but also legislation in general. At the same time, an important element of the functioning of society is its moral values and ensuring their proper implementation by citizens. In turn, one of the most dangerous criminal offenses against morality is the involvement of minors in illegal activities. Among such of them as the involvement of persons in begging, gambling, drunkenness in the number of manifestations, the direct commission of illegal activities stands out quite sharply.

It should also be emphasized that among the most common illegal acts in which minors are involved, theft, robbery, drug trafficking, hooliganism should be mentioned. Given that the studied category of criminal offenses is committed before persons reach the age of majority,

this causes negative changes in the minds of the latter, this becomes the so-called "Primary School" of criminals, which later leads to their relapses.

We should immediately emphasize the importance of conducting a systematic analysis of the objective conditions in which a criminal act is committed, as well as the traces of its commission. In addition, when investigating the situation of a criminal offense committed, it is of great importance to establish spatial and temporal factors. Therefore, consideration of a certain element of forensic characteristics is necessary and timely.

Recent publications review. V. Agafonov, V. Antsiferov, V. Bakhin, R. Belkin, N. Belyaev, I. Bukaeva, A. Volobuev, V. Galagan, A. Ishchenko, A. Ilyev, A. Kolesnichenko, V. Konovalova, M. Kuratchenko should be distinguished among the scientists who considered the situation of the crime and the trace picture in their works V. Lazarev, V. Lisichenko, M. Panov, M. Porubov, M. Saltevsky, O. Sirenko, V. Shepitko, O. Filippov, M. Yablokov and others.

But in their works, the situation of involving minors in illegal activities as an element of forensic characteristics was only mentioned, and was studied in detail only from a criminal-legal or criminological point of view. It should be noted that our research is a comprehensive approach to studying the situation and the trace picture of involving minors in illegal activities through the prism of studying various opinions of scientists and empirical material.

The article's objective is to conduct a forensic analysis of the situation and the trace picture in the investigation of the involvement of minors in illegal activities.

Discussion. For a definition of the concept of the situation of committing a criminal offense, let's turn to the opinions of various scientists. I. Bukaeva defined it as a form of interrelation of physical and social environments in the implementation of the mechanism of crimes, which forms objective patterns of their functioning, the development of criminal intentions or refusal of crimes and is a reflective system of illegal behavior, according to the patterns of which, based on a complex of traces, a retrospective model of crimes is created in the process of its investigation, internal connections, conditions and causes of crimes are identified, methods of using forensic techniques, tactics and methods of Investigation are determined [1, p. 47].

The opinion of V. Lazarev is relevant here, who noted that the situation of committing any criminal offense is an invariable component of its forensic characteristics. After all, each socially dangerous act is characterized by a certain set of conditions in which it was committed. The study of these conditions allows employees to model the investigation process depending on the specific investigative situation, plan investigative (search) actions and other activities.

At the same time, their systematization, depending on the specific composition of the crime, provides an appropriate model of this behavior. Therefore, the issues of the situation of involving a minor in prostitution and pimping are undoubtedly relevant [2, p. 226]. We support this position and also consider it mandatory to study the situation of involving minors in illegal activities as a condition for more effective investigation of these criminal manifestations.

V. Prokhorov focuses on the fact that the withdrawal of these circumstances beyond the objective side of the crime means, of course, their withdrawal beyond the crime in general. It is clear that the place, time and situation are not signs of an act, but they are signs of a crime – a concept broader than the concept of an act and the consequences caused by it. If the place, time and situation of the commission of a crime were not independent elements of the objective side of the crime, then they could not appear as signs of the objective side of the crime, since the ratio of the objective side of the crime and the objective side of the crime implies that not every objective sign of the crime belongs to the signs of its composition, but any objective sign of the crime is a sign of a crime [3, p. 316-317].

Another group of scientists (L. Dubovitskaya, I. Luzgin) notes appropriately that the criminalistic essence of the situation of committing a crime, its functional purpose, taking into account the specifics of forensic methods of cognition, is to naturally reflect the events of the crime in various types of traces, predetermined by the mechanism of their formation and the possibility of using such traces and in general the "trace picture" of the crime [4, p. 34]. You can also find in this statement a stable relationship with the trace picture, which we also define.

In turn, some scientists point out the possibility of using an integral concept of the situation of an illegal act. That is, to apply it to determine a set of conditions and circumstances limited to a certain place and time, the material situation of the scene of the incident, the object and subject of a criminal offense, and other components in which the preparation, Commission and concealment of an illegal act is carried out [5, p. 179].

At the same time, S. Vinokurov focuses on the fact that a certain scientific category should be considered as a system of factors of objective reality interacting in a certain way in specific conditions of place and time, determining the direction and course of human behavior in the events of crime, as well as the determining nature, mechanism and conditions of material reflection, processes and phenomena occurring in the form of a characteristic, relatively stable (for the same type of crimes) set of traces, the study of which allows us to judge the essence of what happened [6, p. 46].

In the same perspective, O. Sirenko, after exploring a number of studies done by scientists, concluded that the situation of committing a crime is a set of various kinds of objects interacting with each other, objects, phenomena and processes that characterize the conditions of place and time, material, natural-climatic, industrial-household and other environmental conditions, features of the behavior of indirect participants in illegal behavior, psychological connections between them and other circumstances of objective reality that have developed (independently or by the will of the participants) at the time of the crime, which affect the method and mechanism of its commission, which manifest themselves in various traces that allow us to build conclusions about the features of this system and the content of the crime [7].

At the same time, in our opinion, M. Valeev most clearly and accurately defined the studied element of forensic characteristics, noting its components: place, time, object, subject of encroachment, the composition of accomplices and the nature of their relationships with the victim and other persons, as well as material elements of the environment [8, p. 21]. Given the above, we believe that the essence of the situation can be revealed only if the characteristics of its components are established, namely: the time, place and conditions of committing an illegal act. Regarding the place of commission of a criminal offense, we note that, according to I. Gerasimov, it includes a number of interrelated attributes that express the features of a particular event that occurred.

The study of information obtained at the scene of the incident, their correct understanding make it possible to determine the nature of the criminal offense, possible locations of traces and formulate ways of Investigation [9, p. 9]. V. Shepitko notes that this is a part of the material environment that contains, in addition to a section of the territory, a set of different objects, the behavior of participants in the event, psychological relationships between them [10, p. 184].

Other authors point out that if the place concretizes and individualizes the crime, then time characterizes the beginning, duration and end of the crime process, specifying these most important circumstances. Establishing the place of commission of a crime allows, first of all, to localize the search for traces in space (territory, specific room, vehicle), as well as to put forward versions about the mechanism of criminal encroachment and persons who could have committed it, to check the alibi of suspects [11, p. 23].

With this in mind, we support M. Kuratchenko, who emphasized that the crime scene should be investigated from different angles. In particular, on the one hand, as the geographical distribution of the criminal offense under study, on the other – the specific place of its commission. The location of pimping and involving a person in prostitution is part of the event. It contains a large amount of information about the method of committing a criminal offense, certain data about the identity of the criminal [12, p. 82].

Quite unique is the opinion of L. Brich that first you need to determine the content of the concept of "the place of commission of a crime as a sign of the composition of a crime", and only then study its individual characteristics. To clarify this statement, the scientist outlined the following list of circumstances that needed to be established: whether the concept of "crime scene" covers only the place of committing a socially dangerous act (action or omission), or whether it includes the place of occurrence of socially dangerous consequences; whether the concept of crime scene extends to the location of other signs of a crime; how to distinguish cases when certain spatial characteristics are the place of commission of a socially dangerous act and, accordingly, an independent sign of the composition of a crime – the place of commission of a crime, from cases when certain spatial characteristics relate to other signs of the composition of a crime [13, p. 269].

In general, regarding the places where crimes against morality are committed, A. Landina points out that among them there are various kinds of premises: an apartment, a house or part of a house; a room in a hostel or hotel room; an office or other office space; premises in buildings of industrial and industrial, municipal, educational, medical purposes; in places of entertainment, rest homes, utility rooms (sauna, shed, garage, basement, bath) and

other premises in which these actions take place [14, pp. 146-147]. On the basis of a detailed and systematic analysis, one should reveal the significance of informative content of the forensic characteristics of involving minors in illegal activities with such elements as the situation and the trace picture.

When analyzing the materials of criminal proceedings, we found that most of the involvement of minors in illegal activities occurs in such places:

- 1) entertainment venues (night clubs, cafes, bars, restaurants);
- 2) recreation areas (recreation centers, hotels);
- 3) places of residence of the criminal or minor (apartments, houses);
- 4) places of study of a minor (schools, technical schools, institutions of higher education).

So, on February 16, 2017 at about 11:00 by prior agreement with Sh., being in the apartment, acting repeatedly, having intent to openly take possession of someone else's property, namely the victim B., who is the grandmother of Sh., using violence that is not dangerous to the life or health of the victim, D. fisted the victim three or four times on the face and two times on the abdomen, causing injuries to the victim. After that, continuing their criminal activities, locking the victim in the bathroom, D. together with the minor Sh. took possession of the victim's funds totaling UAH 5,500, causing the latter material damage for the above amount [15]. As you can see, the criminal offense, as well as the involvement of a minor in illegal activities, occurred at the place of residence of the latter – in the apartment of her grandmother.

The next component of the situation that we will investigate will be the time when the illegal act was committed. So, time is always expressed in certain indicators (year, month, day, hour) and with a certain degree of accuracy. It can be expressed in calendar terms or in other categories [16]. Another group of scientists (V. Shepitko, V. Konovalova, V. Zhuravel) notes that taking into account the influence of the time factor in the investigation process allows:

- a) to determine the time of the crime event;
- b) to establish temporary connections between facts;
- c) to find out the order of events, actions or facts; d) to calculate the duration of various events, etc. at the same time, the actions of criminals are characterized by a certain selectivity in time [17, p. 277].

In turn, some scientists, in particular, M. Bloom, determine the time of commission of a crime by establishing the operation of the criminal law in time. In addition, the author points out the need to apply this element of forensic characteristics to establish the illegality of a criminal offense and the time of occurrence of criminal legal relations. Moreover, M. Bloom focuses on the fact that the study of the time of committing a criminal offense is necessary to determine the prerequisites for criminal liability, namely, person's sanity and reaching the age provided by law for recognizing them as a subject of a criminal offense [18, p. 3].

V. Malinin says that the place and time of the commission of a crime is important for determining the situation, based on the understanding of space as their organic unity, when neither time nor territory can exist without each other (in some cases, they allow us to distinguish a significant part of the situation in the Criminal Law sense, in others cases they form spatial and temporal boundaries, within which there is a fundamental dependence for criminal law of the public danger of an act on the situation of its commission) [19, p. 477]. We support this view and will continue to explore the relationship between these elements.

The study of judicial and investigative practice allowed us to establish that the greatest number of involving minors in illegal activities according to the time of day criterion is committed in the evening (from 18 to 24 hours.) – 51%, 14% – at night (from 24 to 6 hours.), 12% – in the morning (from 6 to 12 o'clock.), 23 % – during the day (from 12 to 18 hours.). Depending on the day of the week, it is determined that minors commit illegal actions mainly on Saturday and Sunday (69 %).

As for the trace picture, we should immediately note that some scientists believe that it reflects in a materially fixed form the entire sum of the circumstances of the event under study related to the subject of proof, and represents the total trace of this event. That is, in their opinion, the material situation is a potential trace carrier, and the trace picture is an integral system of sources of relevant forensic information identified in the material situation [20, p. 102].

At the same time, S. Zavyalov points out that "a crime event is one of the material processes of reality, which is connected and mutually conditioned with other processes, events

and phenomena, is reflected in them and is itself a reflection of some processes. Any event is related to changes in the environment, and in order to find out about the event of a crime, it is necessary to identify the changes associated with it. Only by the traces that are investigated in the course of the event under investigation, it is possible to judge its content" [21, p. 9].

M. Starushkevich enriches a specific scientific category by outlining traces of criminal activity as any changes in the environment that have arisen as a result of committing a crime in this environment, meaning that any changes in objective reality can carry criminally significant information about a criminal event [22, p. 22-23].

In turn, R. Belkin emphasized that material traces of a crime should not be included in the structure of forensic characteristics of crimes, since its concept includes methods of committing and concealing a crime, which consist not only in describing criminal actions or omissions, but also leave certain traces. But the author suggests an alternative solution to this question: a naked description of the method of committing a crime does not achieve the goal, it must be performed either from traces of application, or to traces of application of a certain method, in order to be able to identify evidence of the crime committed and establish the identity of the criminal [23, p. 191].

We find the definition of F. Sova as the most accurate, who defines the trace picture as a set of material changes that are the consequences of a criminal event; a change in the situation associated with the appearance or disappearance of an object; a change in the state of the object (this includes both the appearance on objects of traces-reflections, and the destruction of objects; parts of any objects (solid, liquid, bulk); smells of people, animals, substances, etc. [24, p. 77]. For his part, V. Galagan also divides traces into material (arising as a result of the interaction of various objects) and ideal (subjective images of objective reality reflected in human memory) [25, p. 2].

Based on the processed scientific works of forensic scientists, we have formulated a trace picture of a criminal offense as a set of personal and material traces that are the consequences of an illegal act, in other words, any changes in objective reality that have criminally significant information.

In turn, A. Ilev notes that an important source of criminally significant information in criminal proceedings regarding the involvement of minors in criminal activities is the trace picture. Based on the analysis of criminal proceedings in which pre-trial investigation was carried out under Article 304 of the Criminal Code of Ukraine, the author identified six groups of traces:

- 1) traces of a person: ideal traces (testimony of the victim, suspect, witnesses); material traces (traces-reflection, traces-substances);
 - 2) tools for committing a crime and their traces;
 - 3) other people's things, documents appropriated by the criminal;
 - 4) things that contributed to the commission of a crime (Narcotic Drugs, Psychotropic Substances, precursors, transport, firearms or cold weapons);
 - 5) Electronic reflections;
 - 6) other material traces (vehicles, the use of firearms or cold weapons, textile fibers)
- [26, P. 8].

Analysis of the materials of criminal proceedings shows that traces of involvement of minors in illegal activities in 79% of cases were found at the place where the act was committed. Outside the place of their commission, traces were formed as a result of the actions of criminals related to the preparation and concealment of illegal activities.

It should be noted that, for example, M. Saltevsy advises classifying information sources on the following grounds: the philosophical basis is the theory of reflection. Based on this, all objects are divided into two classes: a) sources of ideal (mental) reflection (people) and B) sources of material reflections (things); the basis of Criminal Procedure classification is the division of evidence into personal and material. Personal sources are people who are subjects of a crime or have information related to the event of a crime (victim, witnesses, etc.); the forensic basis for classifying information sources is the theory of Forensic Identification and the concept of forensic identity. Any object located within the framework of criminal proceedings is considered in the aspect of its equality, identity to itself, that is, whether it is the same one that was "present" at the scene of the incident or "participated" in the commission of a crime [27, p. 257].

The study of forensic investigative practice allowed us to establish that in places where illegal acts were committed, authorized persons found: hand marks – 39%, traces of blood and

other organic substances – 32%, traces of tools for committing a criminal offense – 28%. It was also found out that handprints were found mainly in the investigation of criminal offenses against property (theft, robbery, fraud), and traces of blood and other organic substances are characteristic of illegal acts against public order (hooliganism, mass riots).

In turn, some scientists suggest that in order to effectively search for and use sources of criminally significant information about the identity of a criminal in criminal proceedings concerning the involvement of minors in criminal activities, such sources should be classified on certain grounds. In particular, A. Ilev suggests dividing such sources into groups depending on the form of reflection of the properties of this person and the method of storing information about them into:

- 1) sources of ideal information;
- 2) sources of material information;
- 3) complex sources as a system of combining two elements "person – thing".

In the first group, the author refers to living persons who have information (of interest for investigation) about the identity of the criminal, which is stored in their memory in the form of a mental (imaginary) image. In this case, a living person is not only a source, but also a carrier of criminally significant information. The second group includes sources of material information – objects of the material world in the form of any traces that reflect the event of a crime, since they were "present" at the time of its commission.

These include documents, things, objects, the body of a living person, traces of human secretions, and so on. Sources of material reflections are objects of the material world, mainly of inanimate nature. As for the third group of "person – thing", A. Ilev points out that during the collection and research of sources of forensic information, situations often arise when it is necessary to establish factual data from two simple sources – personal and material, which formed the "people – things" system as a complex source. Such a source contains two types of information:

- 1) obtained through an ideal reflection;
- 2) material reflection [28, p. 169].

Given the above, we consider it appropriate to focus on the fact that violent methods of involvement often leave ideal traces (traces of the memory of a person – eyewitnesses, friends, relatives), as well as material ones (on the body and clothing of both a minor and a criminal).

Conclusion. Summing up, we note that the situation of involving minors in illegal activities includes a number of interrelated elements: time, place and conditions.

Based on the study of forensic investigative practice, we have identified nodal areas where traces of a criminal offense can be concentrated, in particular these places:

- a) direct commission of illegal acts by minors;
- b) residence of the criminal;
- c) residence of a minor;
- d) committing actions to involve a minor in illegal activities.

We also note that the trace picture of the commission of a criminal offense is a scientific category, the study of which is necessary in the study of any forensic characteristics. In turn, the involvement of minors in illegal activities is also characterized by separate specific features that are reflected in the trace array left after the commission of a criminal offense.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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КРИМІНАЛІСТИЧНИЙ АНАЛІЗ ОБСТАНОВКИ ТА СЛІДОВОЇ КАРТИНИ ПРИ
РОЗСЛІДУВАННІ ВТЯГНЕННЯ НЕПОВНОЛІТНІХ У ПРОТИПРАВНУ ДІЯЛЬНІСТЬ

Анотація. Наукова стаття присвячена дослідженню деяких аспектів криміналістичної характеристики втягнення неповнолітніх у протиправну діяльність. Розглядається обстановка вчинення та слідова картина кримінального правопорушення як елемент криміналістичної характеристики вказаного протиправного діяння, а також їх зв'язок з іншими елементами.

Автор зазначає, що будь-яка структура потребує певної послідовності у визначенні її елементів та окреслення послідовності їх дослідження. І методика розслідування кримінальних правопорушень не є виключенням. Адже розуміння сутності та наповнення зазначеної наукової категорії визначає подальше дослідження окремих її складових. Тобто визначення сутності методики розслідування втягнення неповнолітніх у протиправну діяльність має важливе значення для структуризації зазначеного процесу.

В той же час, вагомим елементом визначеної наукової категорії є криміналістична характеристика, невід'ємними елементами якої є обстановка кримінального правопорушення і слідова картина. Вказану складову ввели в структуру методики розслідування відносно недавно, але вона вже посіла відповідне місце в її структурі. Тому її дослідження в розрізі загальної наукової категорії має значення для побудови дієвої методики розслідування втягнення неповнолітніх у протиправну діяльність.

На основі дослідження судово-слідчої практики визначено вузлові ділянки, де можуть бути зосереджені сліди кримінального правопорушення, зокрема це місця: а) безпосереднього вчинення неповнолітніми протиправних діянь; б) проживання злочинця; в) проживання неповнолітнього; г) вчинення дій щодо втягнення неповнолітнього у протиправну діяльність.

Зазначено, що слідова картина вчинення кримінального правопорушення є науковою категорією, дослідження якої є необхідним при дослідженні будь-якої криміналістичної характеристики. В свою чергу, втягнення неповнолітніх в протиправну діяльність також характеризується окремими специфічними особливостями, які мають своє відображення і у слідовому масиві, залишеному після вчинення кримінального правопорушення.

Ключові слова: *неповнолітній, протиправна діяльність, криміналістична характеристика, розслідування, втягнення, обстановка, слідова картина, кримінальне правопорушення.*