

SUMMARY

Kotsyuba S.A. Ensuring human rights during search in the investigation of misappropriation of firearms committed by servicemen. The scientific article deals with peculiarities of the investigation of the illegal taking vehicles, committed by organized groups.

The analysis of the legal framework and also taking into account the views of scientists, the article highlights the organizational and tactical features of the investigative inspection in the investigation of illegal taking vehicles, committed by organized criminal groups. Special attention was paid to the types of objects of investigation examination, which in turn defines tactical features of the meeting. The author emphasizes that to define the characteristics of an organized group (for example, prior sorgentone in a common Association to make taking vehicles; duration of criminal activity; an agreement and a willingness to commit crimes of each participant of the organized group and receiving material benefits from such activities; the members of an organized group) are important types of inspections: the inspection of the scene, where illegally seized the vehicle; inspect vehicles detected during the investigation or investigation; close inspection of the object, which illegally took control identified during the pre-trial investigation; close inspection of component parts and mechanisms, which illegally seized; inspection of storage areas («sludge», parking (garage or garage cooperatives, casting warehouses, sheds, private farms and other property, and the like) criminals of the vehicle, which illegally seized; inspection of cargo (goods, belongings, valuables, documents), which became the direct subject of abuse of perpetrators; the examination of the place of sale of the vehicle, which is illegally seized, or parts of it (market, forest, offices, workshop; inspection of computer hardware (with which access to the Internet, with the purpose of selling motor vehicles or their parts and aggregates or used during the preparation or Commission of crime); inspection of the technical means by which it has been penetration into the vehicle; inspection of documents used by criminals for the purpose of preparation, commit and conceal crimes, as well as the realization (sale) of the vehicle (registration certificate, power of attorney, bill of sale) and so on.

Keywords: pre-trial investigation, illegal possession of a vehicle, inspection, organized group, investigator, tactics.

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USE OF VIDEO AND PHOTO FIXATION AS EVIDENCE
IN COURT PROCEEDINGS: COMPARATIVE
ANALYSIS OF UKRAINE AND SPAIN

Рамос Г., Кононець В.П. Застосування відео- та фотофіксації як доказу в судовому провадженні: порівняльний аналіз України та Іспанії. У статті розглядається правове регулювання правових підстав застосування працівниками поліції технічних засобів фото- та відеозйомки на підставі Закону України "Про Національну поліцію". Узагальнено матеріали Єдиного державного реєстру судових рішень щодо винесення судами рішень з питань використання технічних засобів. Розглянуто законність застосування технічних засобів та надання відеодокументів як доказів у судовому процесі України та Іспанії. Проаналізовано питання використання відеозапису, що має забезпечити найбільш точну та повну фіксацію фактів, що мають доказову силу.

Авторами вивчено та обговорено питання, пов'язані з використанням поліцією технічного обладнання, зокрема у процесі встановлення фотографій та відеозаписів за фактами правопорушень, що відіграє важливу роль у пошуку злочинців та правопорушників, допомагає збирати докази, вивчати документи та інші суттєві докази.

Використання відеозапису забезпечує найбільш точний та повний запис фактів, що мають доказову силу. Відеозйомка не замінює фотографію, але доповнює її, дозволяє записувати об'єкти не тільки в статистиці, але й у динаміці. Саме тому законодавство Іспанії щодо фото- та відеофіксації в діяльності поліції є одним із безперечних доказів при розгляді матеріалів правопорушення у суді.

У статті розглянуто порівняльні характеристики застосування працівниками поліції технічних засобів фіксації за факти злочинів, кваліфікованих відповідно до іспанського законодавства, оскільки в іспанському законодавстві існує лише Кримінальний кодекс для всіх видів правопору-

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шень з відповідним розмежуванням незначних, середньої тяжкості та тяжких злочинів.

Ключові слова: кримінальна поліція Іспанії, втручання, технічні засоби розслідування в Іспанії, попередні докази, експертиза.

Formulation of the problem. The issues related to the use of technical means in the process of fixation of legal offenses by police, in particular during the implementation of photos and video fixation, are currently very relevant. It plays an important role in the search for criminals and offenders, assists in collecting evidence, exploring documents and other material evidence. After investigating the judicial practice of the Unified State Register of Court Decisions, which clearly indicated the testimony of technical devices as "investigated in court evidence" and listed as added to the protocol, we came to the conclusion that in most cases the court guided and relied on Art. 251 of Code of Ukraine on Administrative Offences [2], under unclear circumstances, makes a decision to refuse to recognize a particular video document as proof of an administrative case. Consequently, one of the research aspects of the scientific article is to establish a practical procedure of case investigation during the examination in court, in the event that all procedural documents of the case reflect the conformity of the procedure for the use of video of the offense committed. Establishing the circumstances of a court position that does not take into consider or does not take into account video materials provided by the police? Why does the court not always perceive a recording from a video recorder as an obvious fact of an offense committed that does not require additional and more evidence base?

Analysis of recent publications. In science, the problem of the use of technical means is the subject of attention of a number of scientists, among which one should note such scientists as O.V. Jafarova, A.E. Golubov, V.O. Ivantsov, S.O. Shatrava and others.

The aim of this article is a comparative analysis of the use and application of technical means for fixing offenses according to the legislation of Ukraine and Spain. Analyzed the materials of the Unified State Register of Court Decisions concerning the issuance by the courts of rulings on issues related to the use of technical devices in fixing illegal actions in Ukraine and Spain.

Achieving this purpose, involves solution of the following **tasks:**

- to summarize the materials of the Unified State Register of court decisions regarding the issuing of rulings by courts on issues related to the use of technical devices in fixing illegal actions;
- to formulate suggestions and recommendations regarding the improvement of the normative base by the bodies of the National Police.

Taking into account the different character and the chosen direction for the judge to make a trial, it should be noted that the chosen way undoubtedly affects the course and results of the trial in court. Most often, in judgments or other court decisions, there is ambiguity in satisfying or refusing to engage the results of photo or video as evidence. In one case, in the absence of this kind of evidence, the judge asks for the attraction or withdrawal of such record, which actually drags the time of the trial. And in other cases – on the contrary, in the presence of the necessary video denies its evidential character and generally rejects the ability to be included in the case. Such position of judges is very ambiguous, incomprehensible and requires a detailed study from a scientific and practical point of view, and in the future, with the formation and adoption of an instruction to determine the algorithm of actions when evaluating video evidence for different categories of cases, taking into account all important aspects. As in certain cases, the permissibility of video recording may explain and accelerate the trial with the fair and legal sentencing by the court. And in the case of absence of an appropriate carrier of evidence, the trial can go a deadlock and even in the worst case to bring the innocent person to criminal responsibility.

First of all, we would like to point out that this is a rather complicated phenomenon in court activity, since it is difficult to clearly state at what grounds the court makes one or another decision, not always following the rules of Code of Ukraine on Administrative Offences. In my opinion, the court, when deciding on a sentence, takes into account its own convictions in relation to this case and acts in accordance with the situation happened. But it is also equally not legally correct, because it does not meet precisely such requirements as impartiality and objectivity. As an example, it is possible to consider the Resolution of the Court of Appeal on the case No. 490/11314/16-r dated 02/24/2017 in the city of Mykolayiv.

It is precisely if to turn to the statistics on the fact of consideration of materials for the

offense provided for in Art. 130 of Code of Ukraine on Administrative Offences, its state remains unclear and constantly changes.

Investigating such practice of consideration of cases, we came to the conclusion that a large number of appealed rulings, issued by police according to Art. 130 of Code of Ukraine on Administrative Offences and court rulings on bringing a person to responsibility based on the specified article, provides for the attempt of the offenders to avoid responsibility, because the court during the investigation of the case does not take into account the video fixation provided by the police as evidence, which resulted in the number of those challenged regulations [4].

Also, if we return to the analysis of the decisions made by the bodies of court, we can conclude that there are two reasons why the court satisfies the appeal in its entirety:

- 1) the lack of procedurally correct protocol about administrative violation;
- 2) the petition about the appointment of examination of police officers' video recordings.

Only on the basis of these aforementioned nuances the court decides the case in favor of the offender.

Police video in all developed countries of the world is a system of types, methods and techniques used to the conducting of fixation or prevent illegal actions, in order to provide the court with visual evidence, which should be considered as one of the main blocks of evidence.

The use of video recording ensures the most accurate and complete fixation of facts that have the evident value. Video shooting does not replace the photo, but complements it, allows to capture objects not only in statics, but also in dynamics.

That is why the legislation of Spain for photo and video fixation in the activities of the police is one of the undisputed evidence when considering the materials of the offense in court.

Thus, we want to provide a comparative characteristic of the involvement of technical means of fixation by police officers in case of criminal offenses according to the Spanish legislation. Given that under Spanish law, there is only a Criminal Code for all types of offenses with appropriate distinction for easy, medium and heavy crimes. Thus, based on the Spanish legislation, when considering a case in court, police must provide the evidence of the suspect's guilt being confirmed, including an "inquisitional exam" organized by means of photographs and video fixation confirming the fact of the offense, so that in these cases of its realization is absolutely necessary, as stipulated in Art. 152 of the CCO of Spain [18], "the reliability, accuracy and consistency of recognition or identification can not be denied, because the individuals who have witnessed, became accused, are recorded and stored by the police in the appropriate "photos of the suspect". As already mentioned, if it is technically possible, it is desirable, according to the legislation of Spain, to take a picture or video in order to provide more power of persuasion when considering a case in court. Thus, identification can be absolutely necessary for the conviction of the accused, in accordance with the procedure of trial, with the use of appropriate evidence of photography, video fixation, therefore, it is necessary that every legal and constitutional requirement is fulfilled, otherwise the consideration of the case will not be fully considered.

Video and photographic recognition are supportive, especially when the suspect is not identified. Thus, the CCO of Spain determines that if there is a suspect who is not fully identified, intelligence should be conducted directly [17]. The Supreme Court, by its decision, confirms the legality of the photographic identification, but as such a preliminary proof, which was legally carried out within the framework of a police investigation.

The most expedient according to the law of Spain are considered to be evidence submitted to the court, which have the following nature:

- For each identified person, it is necessary to submit the appropriate protocol.
- The number of photos and videos accompanying each suspect must consist of the quality in sufficient amount, which makes it possible to identify them in photos and videos without any doubt.
- The law provides the suspect with the opportunity to demonstrate all means of protection connected with the links identified to him (that is, to provide data justifying him, etc.).
- During the demonstration of photo of a suspect it is convenient to accompany those who have similar characteristics and in similar formats of photographic reproductions. Like all procedural acts, it must be signed by the parties, including the lawyer.

In an accident № 503/2008 of July 17 (case about terrorist attacks "11 M") with reference to the proposal No. 1202/2003 of September 22, states that "polls at the police headquarters or in the court at an earlier stage, or by studying photographs or intelligence

structures, are allowed when necessary to identify a person" [11]. Moreover, the law provides for the right to a presumption of innocence, so photo fixation must be supported by testimony and other material in the case. I also want to note that, unlike Ukrainian legislation, the Spanish provides for the possibility of fixing the offense by any means of fixation, and the chest chambers from the police are certified accordingly.

Unfortunately, to date, the patrol police use non-certified technical equipment; therefore, it would be appropriate to create an appropriate technical base to provide the police with unique, functional means of photo and video shooting for the effectiveness of activity and the prevention of illegal and prohibited manifestations (fraud, corruption) in relation to means and information stored on it.

Also, I considered the "Instruction on the procedure for keeping a single record in the police authorities statements and reports of criminal offenses committed and other events" approved by Order No. 1377 dated November 6, 2015 [3] and found the following disadvantages: the lack of a clear deadline for storing documents on the fact of registration of the offense, there is generally no information on how the technical records are registered and where they are stored, as in Section II, paragraph 3 of this instruction stated that material for committing an offense containing the signs it is forbidden to transfer to another police body without registration in the SA journal and entering information into the Uniform Register of Pre-trial Investigations, that is, we again see a gap in this document, where it is not specified again, nothing about the technical details of the devices. Therefore, in my opinion, it would be appropriate to create a single base for the general functions to which would include such as the preservation of information during the period of appeal and the possibility of providing it from the appropriate server to court. As a result I consider it necessary to create a certain instruction "On approval of the interaction of the bodies of the National Police and the court to provide evidence-based video information from electronic servers," which will speed up the exchange of records and its research and further admissibility as evidence in court.

Conclusions. Consequently, accumulation, fixation, systematization, generalization of information used to solve a wide range of police tasks is an integral and necessary part of the work of the police. Unfortunately, the legislative base is not at all tied to the practice of law enforcement, and it takes many years to perfect the relationship between the driver and the police, and the offense and sanction.

That is, taking into account the material set out and the regulatory framework for regulation and, in general, fixing the photo and video fixation by the police to the appropriate institute, it should be noted that video recording as evidence in court is the most effective and least corrupt. After taking into account the provisions of Art. 84 of the CPC of Ukraine, where the sources of evidence are indicated, we can conclude that, for example, the expert's opinion can be rigged by bribing an expert; testimony of witnesses or other eyewitnesses in general to buy. But the video provides a real perception of events that have happened in the past without distortion, as opposed to the testimony of others, who, in their story, are guided by guesses and only by own subjective perceptions of one or another situation.

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SUMMARY

The article deals with the legal regulation of the legal grounds for the use by police officers of technical means of photography, filming, video recording, on the basis of the Law of Ukraine "On the National Police". The materials of the Unified State Register of Court Decisions concerning the issuance by the courts of rulings on issues related to the use of technical devices are summarized. The legality of the use of technical means and the provision of video documents as evidence in the judicial process of Ukraine and Spain are considered. The question of the use of video recording, which should provide the most accurate and complete fixation of facts that have probative value, is analyzed.

Key words: *judicial police of Spain, intervention, technological means of investigation of Spain, preliminary evidence, pre-installed test, legal hacker, intelligence expert test.*