

UDC 343.98

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MODUS OPERANDI OF LUCRATIVE VIOLENT CRIMES AGAINST FOREIGNERS

Abstract. Purpose. The purpose of the article is to reveal the modus operandi as an element of the criminal description of lucrative violent crimes committed against foreigners.

Results. Lucrative violent crimes committed against foreigners (lucrative murders, assassinations on order, robberies, robberies with extreme violence, extortion, etc.) has a special public resonance. One of the conditions for the effective investigation of lucrative violent crimes against foreigners is the establishment of their modus operandi. The modus operandi of committing these crimes involves preparation, accomplishment, concealment. According to the results of the study (including the review of 120 criminal proceedings), the preparation for committing lucrative crimes against foreigners has been expressed in the following actions: the choice of the target of assault (person); the study of the target of assault and the environment in which the offender(s) will have to act; selection of the most effective manner of direct stealing of property, injury to life and health of the person; preparation of the necessary means and tools, by which the criminal intent will be committed; the choice how to conceal the traces of the crime, concealment and sale of the stolen; the preliminary distribution of roles among the accomplices.

Conclusions. The modus operandi of criminal lucrative violent acts against foreigners varies depending on the type of crime. Despite their diversity, they share a number of common features. This is a lucrative motive, expressed in the orientation of the criminal assault and a violent manner in which it is realised through physical or mental violence. Concealment of lucrative violent crimes committed against foreigners takes the form as follows: concealment of the fact of the crime (destruction and coverup of material sources of information on the crime, destruction of electronic traces of the crime, staging of the crime); concealment of material objects (targets of criminal assault and physical evidence), distortion of ideal traces (threats to the victim and witnesses, blackmail, intimidation of the victim and his/her family). Frequently, these ways of concealing lucrative violent crimes committed against foreigners are combined.

Key words: criminal description, modus operandi, trace evidence, foreigner, victim.

1. Introduction

Lucrative violent crimes committed against foreigners (lucrative murders, assassinations on order, robberies, robberies with extreme violence, extortion, etc.) has a special public resonance. A number of factors are involved in the causes of these crimes. These are the economic crisis, the impoverishment of the population and the moral degradation of part of society. Under such circumstances, victimised foreigners attract the attention of persons with criminal experience, willing to make an easy profit and willing to achieve their goals, ignoring the rule of law, using illegal and immoral means, methods and techniques. This situation requires law enforcement bodies to apply a range of measures to ensure the security, rights and freedoms of foreigners, as well as to exercise preventive and human rights functions.

One of the conditions for the effective investigation of lucrative violent crimes against foreigners is the establishment of criminal characteristics of this group of crimes, the key component thereof is their modus operandi.

Theoretical framework for investigation of lucrative violent crimes are reflected in the works by V.Ya. Horbachevskiy, V.A. Zhuravlia, A.V. Ishchenko, V.O. Konovalova, O.S. Sainchyn, V.V. Tishchenko, K.O. Chaplunskyi, and B.V. Shchur.

Some aspects of criminal proceedings involving foreigners have been revealed in the works by A.A. Kalganova, P.H. Nazarenko, Yu.M. Chornous, and M.M. Shykoriak.

However, the criminalistic characteristics and modus operandi of committing lucrative violent crimes against foreigners remain

unknown in the scientific literature. Nowadays, comprehensive coverage of topics, taking into account the social, legal realities and features of the implementation of criminal activities are required.

The purpose of the article is to reveal the modus operandi as an element of the criminal description of lucrative violent crimes committed against foreigners. This purpose requires to generally describe the modus operandi of committing lucrative violent crimes against foreigners, to determine its qualitative and quantitative features on the basis of the conducted theoretical and empirical studies.

2. Elements of the modus operandi of criminal activity

The first structural element of the criminal manner is preparation. Preparation for lucrative violent crimes against foreigners are subject to planning. The target of the assault is selected (intelligence is used, victimisation of the future victim plays a significant role at this stage), after which the target of the future violation is examined; the means and instruments for committing a crime are selected and adapted, a plan of criminal activities is drawn up, the roles of accomplices are defined and measures are taken to provide alibis for the persons involved in the crime. Therefore, the stage of preparation implies a choice and specification of the way of taking property, causing harm to life and health of the person, as well as preparation of the necessary technical means, means and tools with which the criminal intention will be realised. Moreover, at the stage of preparation, preliminary steps are taken to determine the way of concealing the traces of the crime, in particular the concealment or sale of the stolen.

According to the results of the study (including the review of 120 criminal proceedings), the preparation for committing lucrative crimes against foreigners has been expressed in the actions as follows:

- The choice of the target of assault (person). This refers to intelligence activities, direct or indirect information from other persons (90.8% of criminal proceedings). This situation was established in 93.5% of criminal proceedings for premeditated murder with lucrative motives, 100% for assassinations on order, 75.9% for robberies, 95.2% for robberies with extreme violence, 100% for extortion, 100% for gang attacks assault, etc.

- The study of the target of assault and the environment in which the offender(s) will have to act. To this end, various reasons are used to visit the premises, to study the way of life of the person. During such “visit” sometimes the necessary conditions are created for the realisation of criminal intent (closed

CCTV cameras, damaged alarm system). This was a sign of preparation for the crime on 85% of cases, namely in 83.9% of criminal proceedings related to premeditated murder with lucrative motives, 100% of assassinations on order, 75.9% of robberies, 85.7% of robberies with extreme violence, 100% of extortion, 66.7% of gang attacks, etc.

- The selection of the most effective ways of direct stealing of property, injury to life and health of the person can be realised, as well as preparation of the necessary means and tools, by which the criminal intent will be committed. This is characteristic of 95% of criminal proceedings, including: 96.8% of premeditated murder with lucrative motives, 100% of assassinations on order; 89.7% of robberies, 95.2% of robberies with extreme violence, 100% of extortion; 100% of gang attacks, etc.

- The choice of ways of concealing the traces of the crime, including in which the stolen will be concealed and sold (86.7% of criminal proceedings). This is characteristic of 90.3% of premeditated murder with lucrative motives; 100% of assassinations on order; 89.7% of robberies, 85.7% of robberies with extreme violence, 90.9% of extortion; and 85.7% of gang attacks.

- The preliminary conspiracy between the accomplices of the crime, distribution of roles among the accomplices. A review of criminal proceedings has revealed such characteristic in 48.4% of premeditated murders, 66.7% of assassinations on order, 44.8% of robberies, 47.6% of robberies with extreme violence, 54.5% of extortion, 100% of gang attacks, etc.

Therefore, the structural element of the modus operandi of the crime such as preparation is a prerequisite for lucrative violent crimes against foreigners.

The modus operandi of committing lucrative violent crimes against foreigners is diverse and depends, above all, on the type of crime in question. For example:

1. The modus operandi of committing lucrative violent crimes against the life and health of foreigners (lucrative murder and assassinations on order) is the way of conducts (acts or omissions), assaults on the life of another person; consequences, such as the physical death of the victim; causation between said conducts and consequences. The motive and purpose of the crime shall be ascertained, as they are qualifying elements in the commission of lucrative violent crimes.

According to article 115, part 2, para. 6 of the CC of Ukraine, lucrative murder is when the perpetrator, by taking the victim's life, sought to obtain material benefits for himself or others, to obtain or retain certain property rights, to avoid material costs or responsibilities

or to achieve other material benefit (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Life and Health of a Person, 2003).

Article 115, part. 2, para. 11 of the Criminal Code of Ukraine defines an assassination on order. It should be understood as the intentional deprivation of life of the victim committed by a person (the perpetrator) on behalf of another person (the developer). Such commission may take the form of an order, command or agreement (Savchenko, Kisiliuk, Protsiuk, 2019).

2. The modus operandi of committing lucrative violent crimes against the property of foreigners (robberies, robberies with extreme violence, extortion) is the way of taking of illegal possession of the property of others by the use or threat of violence.

Extortion occurs when a person induces another person to part with property or right to property or to perform any property-related act through threats of violence against the victim or his or her close relatives, restriction of the rights, freedoms or legitimate interests of these persons, damage to or destruction of their property or property under their control or protection or disclosure of information that the victim or his or her close relatives wish to keep secret (Savchenko, Kisiliuk, Protsiuk, 2019).

3. The modus operandi of committing lucrative violent crimes against public security (gang attacks) is (art. 257 of the CC), if they are committed against foreigners, is seen in the fact that a gang attack is a separate form of joint criminal activity, whose specific manifestations are, in this case, the organisation of an armed gang and participation in it or in its attack.

A gang is an armed and organised group or criminal organisation previously established to commit several attacks on enterprises, institutions, organisations or individuals, requiring careful long-term preparation (Resolution of the Plenum of the Supreme Court of Ukraine On the Practice of Consideration by Courts of Criminal Cases on Crimes Committed by Sustainable Criminal Associations, 2005).

The gang attacks shall be characterised by features of a sustained criminal association such as: the presence of several (three or more) perpetrators of crime; resilience; armament; the common goal of the participants, that is, the perpetration of attacks on enterprises, institutions, organisations or individuals; the manner in which the offence is committed is an attack on enterprises, institutions, organisations or individuals.

Importantly, gang armament means that at least one gang member is armed (and the rest of the gang know that such weapons

are available and can be used during an attack) (Savchenko, Kisiliuk, Protsiuk, 2019).

4. The modus operandi of committing other lucrative violent crimes against foreigners, in particular the taking of illegal possession of a vehicle, unlawful deprivation of liberty or the kidnapping, is intentional acts, aimed at taking illegal possession of a vehicle and a person, respectively, by force and with lucrative motive. The commission of the crime with lucrative motive occurs when the perpetrator, in committing such acts, seeks to achieve any material benefit for himself or herself or for others (Savchenko, Kisiliuk, Protsiuk, 2019).

3. Common characteristics of the modus operandi of lucrative violent crimes against foreigners

Above, we have considered the modus operandi of lucrative violent crimes are committed against foreigners, based on the review of the relevant articles of the CC of Ukraine. Despite their diversity, they share a number of common elements in the modus operandi of these crimes are committed.

1. The lucrative motive is expressed in the orientation of the criminal assault and a violent manner, in which it is realised, through physical or mental violence. The lucrative motive in the case of conditional murders is interpreted as the desire to obtain, in connection with the commission of the crime, material benefits for himself or herself or for others (to take possession of money, jewels, property), to receive or retain certain property rights, avoid material costs or obligations (inherit, get rid of debt, or payment) or achieve other material benefit (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Life and Health of a Person, 2003).

2. The violent manner through physical or mental violence. It should be emphasised that lucrative violent crimes are crimes in which the realisation of a lucrative goal is carried out only in a violent manner. This category of crime is increasingly dangerous to society, since the taking of material goods is carried out only through the infliction of harm to the physical status and bodily integrity of the person. Coercive influence on the victim is a necessary condition for the realisation of the lucrative purpose of the assault (Holovkin, 2011, pp. 14–17).

Therefore, we argue that violence is a purposeful form of behaviour such as physical and mental influence on the physical and mental sphere of the foreign victim.

Violence in the commission of lucrative crimes against foreigners takes the forms as follows:

a) No danger to the life or health of the victim. Such violence implies the intentional infliction

tion of slight bodily harm, which has not caused a short-term impairment of health or a slight disability, as well as committing other violent acts (striking, beating, unlawful deprivation of liberty) provided that they are not dangerous to life or health at the time of infliction (para. 5 of Resolution 10 of the PSCU "On Judicial Practice in Cases of Crimes against Property" of 6 November 2009 (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Property, 2009)).

Likewise, the violence may be in the form of a threat of violence. The assessment of the risk of violence, as expressed in the threat, should not be based so much on the subjective perception of the risk to the victims as on objective criteria;

b) Danger to the life and health of the victim.

Life- or health-threatening violence is the intentional infliction of slight bodily injury on the victim, resulting in a short-term impairment of health or a minor disability, moderate severity or serious bodily injury, as well as other violent acts that have not caused the above consequences, but are dangerous to life or health at the time of their commission.

For example, these include violence resulting in loss of consciousness or which has the character of causing physical pain, neck-crushing, drop from a height, the use of electric current, weapons, special tools, etc. (para. 9 of Resolution 10 of the PSCU "On Judicial Practice in Cases of Crimes against Property" of 6 November 2009) (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Property, 2009).

The threat of violence means intimidation by the immediate use of physical violence that endangers the life and health of the victim (the threat to kill, injure or perform certain acts that in a particular situation may result in such consequences).

The violent manner is the external manifestation of the lucrative motive in projecting on the final result of the action. The target-setting and instrumental uniqueness of motivation of lucrative violent crimes enable to speak of their increased social danger (Holovkin, 2011, pp. 15–20).

Predominantly, the commission of lucrative violent crimes against foreigners include physical violence. According to a study of criminal proceedings, in 93.3% of cases, it was physical violence in various forms of expression. Mental violence was detected in 6.7% of cases. This is due to the fact that criminals are determined to overcome the opposition of potential victims as soon as possible, act with the aim of removing

objects of lucrative assault (money, things). By threatening, foreign victims were made aware of their desperate situation, often displaying the instruments of crime, including weapons. The threats (i.e. mental violence) are expressed selectively, mainly to victims who, at the time of the assault, cannot defend themselves properly, so are exemplary humiliating, exaggerating the self-worth of the assaulters. They are used when offenders are confident that the criminal intent will be realised without the use of physical violence, usually due to the personal characteristics of the potential victim. In most cases, physical and mental violence are combined to achieve unlawful objectives.

3. The use of means and instruments in the commission of a crime.

According to studies of criminal proceedings, the means and tools used for lucrative crimes against foreigners are: firearms (48.3%), steel arms (15.8%), household items (knives, axes, hammers (20%)), procured, manufactured and specially adapted items (bits, rebar pieces, handcuffs, electric stun guns (22.5%)), pneumatic, traumatic, gas weapons (17.5%).

Under these circumstances, during intentional murders of foreigners for lucrative motives, firearms (45.2%), steel arms (22.6%), household items (22.6%), procured, manufactured and specially adapted items (bits, rebar pieces, electric stun guns, etc. (25.8%)) were predominantly used. In the case of assassinations on order, preference was given to the use of firearms (66.7%).

In cases of robberies with violence against foreigners, the most common means and instruments of the crime are: household goods (26.9%), pneumatic, traumatic, gas weapons (26.9%), procured, manufactured and specially adapted items (bits, rebar pieces, electric stun guns (30.8%)). The commission of the robberies with extreme violence takes place with the use of firearms by criminals (38%), as well as pneumatic, traumatic, gas weapons (28.6%). The means and instruments of the crime were used less frequently when the extortion was committed. In committing gang attacks, criminals use firearms (100%), what is more the use of pneumatic, traumatic and gas weapons (42.9%) is widespread.

Consequently, in the commission of lucrative violent crimes, physical violence is predominantly used against foreigners. In some cases, mental violence is used. This is because criminals rely on the temporary stay of foreigners in the territory of Ukraine, and the victim will not have time and the opportunity to apply to law enforcement bodies on the fact of the crime committed against him/her. Potential victims' resistance and counteraction is overcome as quickly as possible.

For example, on the July night of 2020, the police of Kyiv received a report from a doctor that two 20-year-old foreign students asked for medical help with gunshot wounds of the lower limbs. In the course of processing this information, the police determined that the victims had been injured at 21:30 in Konovaltsa Street in the Pechersk district of the capital. During the conflict, the stranger fired several shots at the men, injuring the legs of two foreigners. They subsequently contacted a medical facility and asked for medical help. At the crime scene, the police carried out a number of priority investigative actions. Information gathered on this fact was entered in the Unified Register of Pre-trial Investigations (Ofitsiynyi sait Natsionalnoi politsii, npu.gov.ua).

The next structural element of the *modus operandi* is the concealment of criminal consequences.

According to V.O. Ovechkin, the ways of concealing crimes are conventionally grouped into:

a) Ways aimed at preventing the acquisition of information about a crime (movement of material sources of information about a crime; concealment of material sources of information; destruction of material, and in some cases ideal (persons) sources of information on a crime; failure to appear before an investigative body; refusal to testify; failure to report);

b) Ways that prevent the acquisition of information about a crime and are aimed at providing knowingly false information (falsification; staging; knowingly false report to conceal a crime; knowingly false testimony) (Ovechkin, 1975, p. 67).

According to Yu.B. Komarynska, concealment activities are material (related to physical influence on material objects) and verbal (spoken) (Komarynska, Halahan, 2013, p. 15).

A review of criminal proceedings has revealed that the way of concealing lucrative violent crimes committed against foreigners consists in actions aimed at:

1) Concealment of the crime (destruction of material and electronic sources of information on the crime (71.7%), coverup of material sources of information (30.8%), staging of the crime (16.7%), hiding from the pre-trial investigation authorities (74) 2%), refusal to testify and perjury (84.2%), alibi (35%), casting suspicion on a stranger (15.8%).

2) Concealment of material objects: concealment of targets of criminal assault (stolen objects, money, personal belongings of victim and perpetrator (62.5%), concealment of physical evidence (means and instruments of crime, personal belongings of victim and perpetrator (76.7%).

3) Distortion of ideal traces (threats to victims (close to the victim) and witnesses (41.7%), blackmail, intimidation (36.7%).

There are specificities of concealing criminal activity depending on the type of crime. For example, the commission of premeditated murder with lucrative motives mainly apply the destruction of material sources of information about the crime (67.7%), concealment of information from pre-trial investigation bodies (64.5%), refusal to testify and perjury (74.2%), concealment of targets of criminal assault (61.3%) and concealment of physical evidence, means and instruments (71%). In the case of assassinations on order, criminals are prepared more carefully, and thus concealment of criminal consequences is characterised by the use of actions with similar rates being higher.

In case of lucrative violent crimes against property, in particular robberies, the main ways of concealment are as follows: destruction of material sources of information on the crime (55.2%), hiding from pre-trial investigation bodies (69%), refusal to testify and perjury (79.3%), concealment of targets of criminal assault (stolen objects, money, property of the victim and the offender (65.5%)), concealment of physical evidence (means and instruments of crime (75.9%)). In addition, in the case of robberies with extreme violence, ways of concealment are distortion of ideal traces, such as threats to the victim and witnesses (47.6%), blackmail and intimidation of the victim and his or her family (52.4%). In the case of extortion, specificity is the ways of concealment, such as simulation of the events of the crime (36.7%), provision of an alibi (72.7%), incrimination of an outsider (45.5%), as well as ones traditionally aimed at distorting ideal traces: threats to victims and witnesses (100%), blackmail, intimidation (72.7%).

In the case of gang attacks, the ways of concealment are the destruction of material sources of information about the crime (100%); the destruction of ideal (human) sources of information about the crime (14.3%); hiding from pre-trial investigation bodies (85.7%), refusal to testify and perjury (100%), as well as distortion of ideal traces (57.1%).

Lucrative crimes against foreigners are characterised by specificities of concealment of criminal activities. Refusal to testify and perjury are common. This is the case if the suspect is a foreigner (about 30% of criminal proceedings). For example, arguing that they misunderstand legislation and implementation practice (and the use of an interpreter), foreigners refuse to cooperate with the pre-trial investigation authorities, essentially speculating their special status.

We advocate V.P. Bakhin's perspective that in connection with the qualitative change in crime and the conditions under which criminal activity is carried out and developed, the importance, place and role of the modus operandi of the crime require rethinking and development of this criminal category. At the same time with the term "the modus operandi of committing the crime" in forensics "the modus operandi of committing and concealing the crime" is used. Based on this, the modus operandi of committing crimes is grouped into "full-scale structure" and "incomplete structure". From a forensic perspective, preparatory acts are included in a manner where, firstly, they are naturally available, and secondly, they leave specific traces, characterizing the behaviour of the perpetrator and distinguishing between different methods. Acts of concealment of a crime can be classified as a modus operandi of a crime if they are covered by the offender's intention and plan of action at the time the crime was committed (Bakhin, 2002, pp. 198–199).

According to H.A. Matusovskiy, the modus operandi of committing a crime by their structure can be of three types: one-element, that is, acts without preparation and concealment of a crime; complex (two-element), that is, in addition to the main element, there are acts of preparation or concealment of the crime; full-fledged (three-element), including preparation, commission and concealment of the crime (Matusovskii, 1999, p. 213).

It is natural to conclude that most lucrative violent crimes committed against foreigners demonstrate a full-fledged modus operandi of committing crimes.

4. Conclusions

The method is a key element of the criminal characterisation of lucrative violent crimes committed against foreigners. The theoretical and practical studies have made it possible to formulate qualitative and quantitative features of the modus operandi of lucrative crimes against foreigners. The modus operandi of committing these crimes involves preparation, accomplishment, concealment.

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СПОСІБ ВЧИНЕННЯ КОРИСЛИВО-НАСИЛЬНИЦЬКИХ ЗЛОЧИНІВ, ВЧИНЕНИХ ЩОДО ІНОЗЕМЦІВ

Анотація. Мета. Метою статті є висвітлення способу як елемента криміналістичної характеристики корисливо-насильних злочинів, вчинених щодо іноземців.

Результати. Вчинення корисливо-насильних злочинів стосовно іноземців (убивств з корисливих мотивів, убивств на замовлення, грабежів, розбоїв, вимагань та ін.) викликає особливий суспільний резонанс. Однією з умов ефективного розслідування корисливо-насильних злочинів, вчинених щодо іноземців, є з'ясування способу їх вчинення. Спосіб вчинення таких злочинів складається із підготовки, безпосереднього вчинення, приховування. За результатами проведених досліджень (у тому числі вивчених 120 кримінальних проваджень) з'ясовано, що підготовка до вчинення корисливо-насильних злочинів стосовно іноземців виражалася у таких діях, як: вибір об'єкта посягання (особи); вивчення об'єкта посягання й обстановки, в якій злочинцю (злочинця) доведеться діяти; вибір найбільш ефективного способу безпосереднього заволодіння майном, заподіяння шкоди життю і здоров'ю особи; підготовка необхідних засобів та знарядь, за допомогою яких буде здійснений злочинний намір; вибір способу приховання слідів злочину, приховання та збут викраденого; попередній розподіл ролей між співучасниками.

Висновки. Способи безпосередньої реалізації злочинних корисливо-насильних дій стосовно іноземців є різноманітними і залежать від виду конкретного злочину. Попри їх різноманітність, їм притаманна низка спільних ознак. Це корисливий мотив, що знаходить свій вираз у спрямованості злочинного посягання, та насильницький спосіб реалізації у вигляді фізичного чи психічного насилля. Приховування вчинених стосовно іноземців корисливо-насильних злочинів виражається у таких діях: приховування факту вчинення злочину (знищення та маскування матеріальних джерел інформації про злочин, знищення електронних слідів злочину, інсценування події злочину); приховування матеріальних об'єктів (предметів злочинного посягання та речових доказів), спотворення ідеальних слідів (погрози потерпілому та свідкам, шантаж, залякування потерпілого та його близьких). Найчастіше відбувається поєднання перелічених способів приховання вчинення корисливо-насильних злочинів, вчинених щодо іноземців.

Ключові слова: криміналістична характеристика, спосіб вчинення злочину, слідова картина, іноземець, потерпілий.

The article was submitted 11.04.2022

The article was revised 02.05.2022

The article was accepted 23.05.2022