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TYPICAL INVESTIGATIVE SITUATIONS DURING THE INVESTIGATION OF ILLEGAL HANDLING OF FIREARMS, AMMUNITION, EXPLOSIVES AND EXPLOSIVE DEVICES

Abstract. Purpose. The purpose of the article is to characterise typical investigative situations during the investigation of illegal handling of firearms, ammunition, explosives, and explosive devices. **Results.** The article identifies the following typical investigative situations: a person is detained while selling firearms (except for smoothbore hunting firearms) without a permit prescribed by law; firearms are found in a certain place or by a person without a permit prescribed by law; the purpose of the suspect's actions has not been established; firearms (except for smooth-bore hunting firearms) were found in the premises, a car belonging to a particular person, or discovered in connection with procedural actions in another criminal proceeding; Internet resources engaged in illegal activities related to the sale of firearms were identified; facilities adapted for the manufacture and repair of daggers, Finnish knives, brass knuckles or other cold steel without a permit provided for by law were found, but the identity of the offender(s) was not established. **Conclusions.** When the investigative situation changes dramatically, the tactics of conducting investigative (search) actions should be adjusted accordingly. However, in any case, the investigator needs to collect the maximum number of key elements of the investigative situation within a short period of time, evaluate them, and make the right tactical decision. The relevant algorithm of an investigator's actions during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices is as follows: assess the initial investigative situation; set tactical tasks, put forward investigative leads and plan the start of a pre-trial investigation; plan and conduct individual investigative (search) actions and other measures to solve the tasks. Other investigative situations, which account for 3.1%, are not typical for illegal handling of firearms, ammunition, explosives and explosive devices and do not have a stable pattern of formation and cannot be the basis for a separate methodology for investigating such criminal offenses.

Key words: firearms, ammunition, explosives, explosive devices, investigative situation, criminal proceedings, investigation.

1. Introduction

Criminal proceedings are carried out in specific conditions of time, place, and situation, based on the actions and behaviour of persons involved in its scope and under the influence of other factors. This complex system of interrelationships constitutes the specific environment in which the investigator and other competent actors work (Piaskovskyi, Chornous, Ishchenko, Aliexsieiev, 2015, p. 306).

The term "situation" (from the Latin word *situatio*) is interpreted as a combination of conditions and circumstances that create a certain environment, a position (Busel, 2001, p. 1102). In case of investigation of criminal offenses,

this interpretation is reflected in the formulation of the concept of "investigative situation" by a significant number of criminalists (Lukianchykov, Lukianchykov, 2001).

Solving pre-trial investigation tasks using a situational approach is a widespread and practice-proven method of analytical and practical work of an investigator, which allows for all important circumstances of the event and proceedings at various stages of the investigation and directly apply scientific developments to its specific situations and conditions. The formation of typical investigative situations of pre-trial investigation of criminal offenses is based on the study of law application materials and is

a component of almost all criminological techniques (Novachuk, 2020, p. 82).

However, not only knowledge of certain algorithms of actions is the key to a successful pre-trial investigation of a criminal offense (Shevchenko, 2018). It is also necessary to analyse and provide a correct assessment of the investigative situation. Since these factors will further affect the correctness of the planned methodological techniques and the choice of making the right tactical decisions.

2. Typical investigative situations during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices

Relying on the study of investigative practice in the investigation of this category of criminal offenses, we can identify typical investigative situations that investigators usually face at the initial stage of the investigation.

The first situation: a person is detained while selling firearms (except for smooth-bore hunting firearms), ammunition, explosives, or explosive devices without a permit provided for by law.

For example: around 8 PM. On February 17, 2021, in Novohrad-Volynskyi, law enforcement officers detained a resident of Rivne region on the sale of a 9 mm Makarov pistol and six rounds of ammunition to a resident of Zhytomyr. After receiving money in the amount of UAH 26.5 thousand for the illegal sale, the offender was detained in accordance with Art. 208 of the CPC of Ukraine, the money, gun and ammunition were seized. Allegedly, a 31-year-old resident of a neighbouring region illegally purchased and stored firearms and ammunition, which he transported to Zhytomyr region for sale. The illegal activities in the field of illegal trafficking in firearms and ammunition were documented under the procedural supervision of the regional prosecutor's office, by investigators of the Main Department of the National Police in the region with the operational support of the SBU Office in the region (Site Zhytomyr info, 2021).

Typically, such situations occur during covert investigative (search) actions (hereinafter referred to as CISA) (operational procurement) and are one of the most favourable compared to others, since there is a purpose of committing a criminal offense (sale), the fact of sale itself, which is a mandatory element of a criminal offense, as well as the firearms that the person tried to sell. In addition, based on the analysis of criminal proceedings and court cases in this category of criminal offenses, pre-trial investigation bodies have a significant amount of information about the circumstances of the illegal act and a wide range of sources of evidence (witnesses, material evidence, ISA and CISA records, etc.).

The main task of the pre-trial investigation at the initial stage in the current situation is to consolidate the available data by conducting investigative (search) actions (ISA).

Investigative leads are put forward regarding the source of acquisition (receipt) of firearms (except for smooth-bore hunting firearms), ammunition, explosives, or explosive devices, the role of the suspect (whether he is a wholesale or retail seller, whether he is a thief of firearms); the identity of accomplices.

Experts in criminology give different interpretations to a criminological category of a lead. According to O.Ya. Baev, the criminological lead is a reasonable assumption of a professional participant in the procedural investigation of crimes about the nature and significance of individual facts, circumstances, their relationship with each other and in the aggregate, within the scope of such an examination, formulated with the aim of objectifying and optimising the achievement of the results of the latter and verified in criminal proceedings (Baev, 2003, p. 127).

In this context, we cannot agree with the perspective of I.F. Herasymov and L.Ya. Drapkin that the investigative lead is an approximate description, while the investigation plan is a directive, a mandatory order (Herasymov, Drapkyn, 1994, p. 231).

We believe that the most successful definition of the investigative lead was proposed by R.S. Belkin, who argues that it is an independent specific forensic tool (forensic method of investigation) used by the investigator to cognise and prove the objective truth in the investigation (Belkyn, 1993, p. 31). Alleged explanations of facts that are not related to the subject matter of proof cannot be considered leads (Belkyn, 1993, pp. 27-28).

To verify the relevant leads, various investigative measures may be conducted, in particular: 1) immediately after the detention of a person (suspect), a personal search is conducted, based on the results of which a relevant protocol is drawn up; 2) examination of the scene; 3) examination of the suspect, obtaining samples for expert examination (if necessary, hand washings, etc.); 4) examination of the suspect's clothing and items (bags, holsters, packages, etc.) that are on his or her person and contain firearms; 5) interrogation of the suspect; 6) search of the suspect's place of residence; 7) interrogation of police officers who participated in the detention, other witnesses to the detention, and attesting witnesses; 8) interrogation of witnesses at the place of residence, work (persons living together with the suspect, neighbours, work colleagues); 9) inspection of firearms and other objects (e.g., money)

related to the sale of these items; 10) appointment of forensic examinations to identify seized firearms (examination of explosive devices, fingerprinting, biological, examination of substances, materials and products, etc;) 11) giving operative officers separate orders to establish the suspect's connections; studying his or her personality and lifestyle, circle of acquaintances, in particular, checking whether the suspect was registered with a narcologist or psychiatrist (Chaplynskyi, Luskatov, Pyrih, Pletenets, Chaplynska, 2017, p. 134).

For example, simultaneously with the measures to neutralise or destroy an explosive device, the operational staff of the IOG, on behalf of the investigator, conduct an oral interview or interrogation of witnesses and eyewitnesses in order to identify the persons involved in this criminal event, and, in addition, establish the ways of approaching and leaving the place of detection of the explosive device. When communicating with eyewitnesses and witnesses, the operational staff should pay attention to the behaviour of persons at the time of detection of the explosive device or arrival of the IOG.

In addition, after the explosive device is detonated, its remains are packed in plastic bags and sealed. Up to 10 grams of the explosive used to destroy the explosive device are packaged separately as a sample for comparative study. After that, the method of destruction, the materials used, describes the remnants of the explosive device after the explosion, and photographs them are put on a record. The investigator should allow for the fact that forensically significant traces (e.g., handprints, traces of biological origin, etc.) may remain on the remains of the explosive device, so measures should be taken to identify, record and seize them (Polishchuk, 2013, p. 96).

The second situation: criminal proceedings are initiated after the discovery of firearms, ammunition, explosives and explosive devices that are located without a permit provided for by law in a certain place (premises, vehicle, locality, cache, parcel, etc.) or on a person; the purpose of the suspect's actions has not been established. The respective share of such situations in the total number of criminal proceedings initiated under Part 1 of Art. 263 of the Criminal Code of Ukraine is 44%.

For example, during a search of a building in Tverskyi dead-end in central Kyiv, police seized several firearms and grenades, and took more than a hundred people to the police station, the press service of the Kyiv police reported on Wednesday evening. "As soon as we received a report that two groups of people had gathered near the premises on Tverskyi dead-end, additional law enforcement reserves were sent to ensure law and order and conduct priority

investigative actions. In particular, as a result of a search of the premises, law enforcement officers seized several firearms and grenades, which were sent for examination. Their origin and purpose of storage will be established. In addition, more than a hundred people have been invited to the territorial police department and are being questioned," said Kyiv Police Chief Andrii Kryshchenko (Radio Liberty website, 2021). Or another case that recently occurred in Sumy: police officers, together with representatives of public organisations, while patrolling the city, found a man who, upon seeing law enforcement officers, became visibly nervous and changed direction. During a cursory inspection, a Makarov pistol and ammunition were found on his person. At the same time, the man did not have the appropriate permit to keep firearms. The man was taken to the police station, and the weapon and ammunition were seized (Social news site, 2021).

The tactical tasks are: to establish the circumstances of the incident and the persons involved in the commission of the criminal offense; to find material traces proving the involvement of specific individuals in the commission of illegal handling of firearms, ammunition, explosives and explosive devices; to search for persons who witnessed the actions of the perpetrators. The basis for the formation of an investigation algorithm for this situation should include actions and measures that facilitate the identification of persons involved in the commission of the criminal offense under investigation.

The most effective primary and urgent investigative measures and other procedural measures include: inspection of firearms; inspection of the scene; inspection of objects and documents; appointment and conduct of forensic examinations; checking the records of the detected firearms; interrogation of witnesses (citizens, officials); search and identification of a person by signs or traces left behind; identification of persons, objects; taking information from transport telecommunication networks and electronic information systems, etc. (Andrieiev, 2020; Shepitko, Konovalova, Zhuravel, 2016).

In such cases, investigative leads should be aimed primarily at confirming or refuting the belonging of the detected firearms to the person who was detained, as well as at establishing the purpose and motives for the criminal offense (Bandurina, 2013).

Options for the main investigative leads may include the following: firearms, ammunition, explosives and explosive devices belong to the detainee or another person; the criminal offense was committed with or without the purpose of sale.

In order to initially verify these investigative leads, one of the first steps should be to interrogate the suspect (obtain explanations), in particular, in order to be able to gradually verify his or her testimony. In addition to the list of investigative measures to be taken in the first investigative situation, it is also necessary to:

1) interrogate persons who can confirm or refute the testimony of the detainee;

2) interrogate the persons identified by the detainee as the owners of the seized firearms, ammunition, explosives and explosive devices;

3) interrogate family members, relatives, neighbours, and other close associates of the detainee regarding the purpose of acquisition of firearms, ammunition, explosives, and explosive devices by the suspect;

4) inspect and seize firearms with the involvement of an appropriate specialist;

3. Typical investigative situations during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices discovered in connection with investigative (search) actions or covert investigative (search) actions in other criminal proceedings

The third situation: firearms (except for smooth-bore hunting firearms), ammunition, explosives and explosive devices were found in a room or car belonging to a particular person and discovered in connection with the conduct of ISA (inspection of the scene, search, etc.) or CISA in another criminal proceeding.

For example, two men, aged 34 and 37, were involved in the illegal appropriation of vehicles. In Ternopil, an Iveco truck was stolen from a new building on Stepan Budnyi Street. Less than a month later, the thieves were active in the Kremenets region. A Volkswagen Passat CC was stolen from a private service station in the village of Velyki Mlynivtsi. Law enforcers managed to detain the persons involved in the illegal appropriation of vehicles. Investigators served them a notice of suspicion of committing a criminal offense under Part 2 of Art. 289 of the Criminal Code of Ukraine." During the urgent ISA at the place of residence of one of the suspects, a stolen car with a GPS jamming device on the roof was found. Additionally, during the inspection of the apartment, the police found and seized drugs, technical passports for various cars and 13 car keys, a GPS tracker, a vehicle locking device, a revolver, and an object similar to a Kalashnikov rifle. The police also managed to locate the Iveco truck stolen in Ternopil. The criminals hid it in the village of Ikva, Kremenets district. During the authorised search, the car was seized. By the decision of the Kremenets District Court, both suspects were subject to

a measure of restraint in the form of detention. The pre-trial investigation is ongoing. Police are checking the suspects for involvement in similar crimes in the region, according to the Ternopil regional police communication department (Shpikula, 2021).

The circumstances of the discovery of the firearms indicate the presence of signs of a criminal offense under Art. 263 of the Criminal Code of Ukraine. The relevant investigative situation is in 15% of criminal proceedings.

The primary tactical tasks of the investigation in this situation are to establish the following circumstances: search for evidence that incriminates or exonerates the suspect; verification of the person's alibi and the reliability of his or her testimony (Volobuiev, Danshyn, Ishchenko, 2018). In this case, investigative leads should be put forward regarding the ownership of the seized firearms by a particular person (group of persons), the purpose of their storage, and sources of acquisition. To verify and develop relevant investigative leads, it is necessary to:

1) identify and interrogate persons living (working) in the premises that were inspected and who had access to it, in particular the owner of the car or persons using it;

2) identify, among a certain circle, persons suspected of committing illegal handling of firearms, ammunition, explosives or explosive devices, if necessary, to inspect their personal belongings and, if necessary, to conduct an additional urgent search in places related to the suspects;

3) identify and interrogate other witnesses;

4) give separate instructions to operational staff to establish possible connections of the suspect, study his or her personality, circle of acquaintances, etc;

5) inspect the detected firearms with the obligatory involvement of specialists (explosive experts);

6) appoint an appropriate forensic examination of the seized firearms.

The fourth situation: Internet resources engaged in illegal activities related to the sale of firearms, ammunition, explosives, or explosive devices have been identified.

This situation stipulates the following leads: a) the Internet resource was created for the sake of curiosity (fun); b) the Internet resource was created by professional programmers ("hackers") only to make a profit for the use of other persons; c) the Internet resource provides a channel for the sale (purchase) of firearms, ammunition, explosives, or explosive devices.

In order to verify these versions, it is necessary to conduct a set of ISA and CISA, including by cybercrime units with the possible involvement of specialists from other law enforce-

ment agencies, aimed at: identifying persons, who have illegally acquired or sold firearms, ammunition, explosives, or explosive devices through the use of an Internet resource; identifying the persons who have created the Internet resource; establishing the purpose of creating the Internet resource; establishing the organisational and functional structure, etc.

Next, the investigator shall: conduct CISA in order to collect and record evidentiary information (observation of a person, thing or place (Article 269 of the CPC of Ukraine); take information from transport telecommunication networks (Article 263 of the CPC of Ukraine); take information from electronic information systems (Article 264 of the CPC of Ukraine); determine the necessity and expediency of control over the commission of a crime (Article 271 of the CPC of Ukraine) in the form of: operational purchase or controlled delivery; interrogation of Internet users and persons involved in the creation of an Internet resource; effective searches of suspects (Tarasenko, 2017; Kovalenko, 2006).

The fifth investigative situation: facilities adapted for the manufacture and repair of daggers, Finnish knives, brass knuckles or other cold steel without a permit provided for by law were found, but the identity of the offender(s) was not established.

This situation stipulates the main lead: the owner of the facility, his or her family members, relatives, friends, or colleagues use the facilities to deliver, store, manufacture, or repair daggers, Finnish knives, brass knuckles, or other cold steel.

To work out this version, it is necessary to carry out the following investigative and other procedural actions and organisational measures:

- to offer the owner to hand over the items or provide temporary access to the items and documents;
- to inspect all seized items and documents;
- to interrogate the owner of the object, his or her family members, relatives, friends or colleagues who had access to the object;
- to detect and take fingerprints on objects and documents;
- to appoint forensic examinations;
- to give a written order to operational officers, etc. (Tarasenko, 2017, p. 115).

Regardless of the investigative situations of the initial stage of the investigation, the investigator's performance at the next stage is related not only to clarifying the actual circumstances of the event, but also to further collecting the necessary evidence in criminal proceedings. In this regard, the investigative situations inherent in this stage of criminal investigation are as follows: evidence obtained that indicates

the person's non-involvement in the commission of a criminal offense; information obtained about accomplices in the illegal handling of firearms, ammunition, explosives, or explosive devices; the suspect continues to insist on his or her innocence of the criminal offense and refuses to cooperate with the pre-trial investigation; the suspect has changed his or her position regarding the criminal offense, admits guilt, and cooperates with the investigation.

In view of this, in any investigative situation, the following circumstances are subject to clarification (as confirmed by the results of the survey of law enforcement officers): the origin of the seized objects (belonging to firearms, ammunition, explosives, or explosive devices) – 100%; their belonging to a person ("owner") – 100 %; whether the person had the appropriate permit to handle certain firearms – 62%; how the firearms were acquired – 58%; the purpose of their acquisition and storage – 73%; the likelihood of using these firearms for criminal purposes (establishing involvement in a number of armed criminal offenses) – 65%; establishing channels for firearms to enter the illicit trafficking – 48%; identifying the range of persons whose actions contributed to this – 32 %.

We believe that such circumstances are a certain guideline in the investigator's cognitive activity, which affects the choice of the direction of investigation.

4. Conclusions

Therefore, allowing for the materials of investigative and judicial practice, we have identified the most common investigative situations. Of course, this list is not exhaustive and may vary depending on the circumstances arising in criminal proceedings. When the investigative situation changes dramatically, the tactics of conducting ISA should be adjusted accordingly. However, in any case, the investigator needs to collect the maximum number of key elements of the investigative situation within a short period of time, evaluate them, and make the right tactical decision. The relevant algorithm of an investigator's actions during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices is as follows: assess the initial investigative situation; set tactical tasks, put forward investigative leads and plan the start of a pre-trial investigation; plan and conduct individual ISA and other measures to solve the tasks. Other investigative situations, which account for 3.1%, are not typical for illegal handling of firearms, ammunition, explosives and explosive devices and do not have a stable pattern of formation and cannot be the basis for a separate methodology for investigating such criminal offenses.

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ТИПОВІ СЛІДЧІ СИТУАЦІЇ ПІД ЧАС РОЗСЛІДУВАННЯ НЕЗАКОННОГО ПОВОДЖЕННЯ ЗІ ЗБРОЄЮ, БОЙОВИМИ ПРИПАСАМИ, ВИБУХОВИМИ РЕЧОВИНАМИ ТА ВИБУХОВИМИ ПРИСТРОЯМИ

Анотація. Мета. Метою статті є характеристика типових слідчих ситуацій під час розслідування незаконного поведження зі зброєю, бойовими припасами, вибуховими речовинами та вибуховими пристроями. **Результати.** У статті виокремлено такі типові слідчі ситуації: особу затримано під час збуту предметів озброєння (крім гладкоствольної мисливської зброї) без передбаченого законом дозволу; виявлено предмети озброєння у певному місці або особи без передбаченого законом дозволу; мету дій підозрюваного не встановлено; предмети озброєння (крім гладкоствольної мисливської зброї) були знайдені в приміщенні, автомобілі, що належить конкретній особі, або виявлені у зв'язку з проведенням процесуальних дій в іншому кримінальному провадженні; встановлено Інтернет-ресурси, які займаються незаконною діяльністю, що пов'язана із продажем предметів озброєння; виявлено об'єкти, пристосовані для виготовлення та ремонту кинджалів, фінських ножів, кастетів чи іншої холодної зброї без передбаченого законом дозволу, але особу злочинця (-ців) не встановлено. **Висновки.** Під час різкої зміни слідчої ситуації повинно бути відповідно скориговано і тактику проведення слідчих (розшукових) дій. Однак у будь-якому випадку слідчому необхідно протягом незначного проміжку часу зібрати максимум ключових елементів слідчої ситуації, оцінити їх та прийняти правильне тактичне рішення. Відповідний алгоритм дій слідчого під час розслідування незаконного поведження зі зброєю, бойовими припасами, вибуховими речовинами та вибуховими пристроями виглядає так: оцінка вихідної слідчої ситуації; постановка тактичних завдань, висунення слідчих версій та планування початку досудового розслідування; планування та проведення окремих слідчих (розшукових) дій та інших заходів для вирішення поставлених завдань. Інші слідчі ситуації, частка яких становить 3,1%, не типові для незаконного поведження зі зброєю, бойовими припасами, вибуховими речовинами та вибуховими пристроями й не мають стійкої закономірності утворення і не можуть бути покладені в основу створення окремої методики розслідування таких кримінальних правопорушень.

Ключові слова: зброя, бойові припаси, вибухові речовини, вибухові пристрої, слідча ситуація, кримінальне провадження, розслідування.

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