

S.V. Tomyn

Candidate of Law Sciences
an Associate Professor of the
Department of Criminal Right, Process
and Criminalistics , Ivano-Frankivsk
Faculty of the National University
«Odesa Law Academy»

OPERATIONAL SUPPORT OF THE PUBLIC PROSECUTOR IN THE TRIAL OF CRIMINAL CASES

In accordance with p. 2 article 264 of CPC of Ukraine one of elements, that forms maintenance of state prosecution, carried out by the public prosecutor in the court, is showing proof by the side of prosecution [1].

Actions of a public prosecutor, which provide achievement of the indicated task is major for validity of the prosecution of a person.

Such research workers devoted their works to this aspect of a activity of state accuser, as V.B. Averyanov, S.A. Alpert, V.I. Baskov, Y.M. Groshewij, V.V. Dolezhan, V.K. Zvirbul, P.M. Karkach, M.V. Kosyuta, N.F. Kuznetsova, V.T. Malyarenko, I.E. Marochkin, O.R. Mikhaylenko, Yu.E. Polyanskiy, V.M. Savickiy, V.O. Environment, V.V. Sukhonos and others.

At the same time, it is necessary to take into consideration that in the works the authors mainly regarded such aspect of evidential activity of public prosecutor in a court, as his participating in realization of judicial actions (interrogation, review, setting of different sort of examinations), and also in research of proofs, produced by the side of defense.

As suitable on this occasion notices G.M. Korolev, in the judicial stages of process evidential activity of public prosecutor has the features. From searching and cognitive it in a greater degree grows into finishing-ground telling [2, p. 361].

In accordance with it, a state prosecution is judicial activity of public prosecutor or other authorized CPC of Ukraine of person, which consists in leading to before the court of prosecution with the purpose of providing of criminal responsibility of person which accomplished criminal offence [3].

In the conditions of contention criminal process, in which the sides of judicial trial use even rights and freedom in the grant of proofs, their research and leading to of their persuasiveness before a court, question of sufficiency and admission of proofs which ground produced to the defendant a prosecution has a decision value.

Taking into account marked, a state accuser, carrying out criminal pursuit in the court of first the instance, must not only participate actively in realization of judicial actions and research of proofs, produced the side of defense but also lead to persuasiveness of proofs, got the side of prosecution on the pre-trial stages of realization in business.

Consider that possibilities of state accuser as do not allow the subject of criminal-procedural activity him at a necessity effectively to realize the functions fixed on him by given him by the law of plenary powers. In practice there is a

necessity to utilize the arsenal of facilities, present for the workers of operative subsections of law enforcement authorities for this purpose.

For this reason a scientific ground and subsequent legislative fixing is required by the basic aspects of co-operation between an accuser and operational investigation organs on the stage of judicial trial of criminal case.

In this connection the purpose of this research is a decision of basic directions of providing of operative accompaniment of activity of state accuser during consideration of criminal cases in the court of first the instance.

On achievement of the noted purpose the decision of the followings tasks is directed: 1) to define the problems of the legal adjusting of co-operation of state accuser and workers of operative subsections of law enforcement authorities; 2) to find out the value of operational investigating activity and maintenance of the state laying to the structure of criminal pursuit; 3) to describe the features of activity of state accuser from finishing telling of legality and validity of the produced prosecution; 4) to outline possibilities of operational investigating measures in leading to before the court of persuasiveness and authenticity of proofs of side of prosecution; 5) to expose the role of workers of operative subsections in counteraction the attempts of falsification of proofs from the side of side of defense on the stage of judicial investigation.

Without regarding the importance and efficiency of co-operation between the indicated subjects of the criminal legal proceeding confirmed in practice, any legal pre-conditions for their joint activity on the stage of judicial trial of criminal cases are absent today.

It is related to the row of factors the basic from which are seen by us in the following.

At first, it costs to mark that state accuser, consequence and operational investigative vehicles of law enforcement authorities are independent subsystems before each which independent tasks appear of. Therefore these subsystems, functioning autonomically one from the other, decide the put tasks by the present personal funds and methods.

Secondly, as practice of judicial trial of criminal cases testifies, a state accuser more frequently is a helper of public prosecutor which is intended for maintenance of state accuser already after a find true bill. In this connection a state accuser does not have plenary powers in relation to the study of materials of operational investigative cases, personal verification of legality of realization of operational investigative measures or direct participating in consequence actions for the ground of legality of their results in a court.

Probing the indicated problems, it is necessary foremost to pay a regard to concept «co-operation», «operational investigative providing of investigation», «operative accompaniment», which repeatedly were the article of research in labours of both domestic and foreign research workers and examined by them as such, that to a certain extent differ from each other on a volume and maintenance [4, p. 75]. Not coming running to the detailed analysis each of them, coming from the aims of this research, will pay a regard to only operational investigative providing which is examined as auxiliary facilities of receipt of fact sheets in interests of the criminal legal proceeding [5] and most exactly characterizes co-operation of state accuser and workers of operative subsections during consideration of business in a court.

Activity of employees of operative subsections from one side heads for an assistance a public prosecutor in maintenance of state prosecution, and from other side – on counteraction the illegal, amoral attempts of defense to «spoil» business. Outprocesual activity must accompany vowel activity of state accuser in the judicial meeting. Such co-operation must also halt influence on the participants of process from the side of defendants and their surroundings, to discover and disrobe in a court the actions of defense, directed on forming an erroneous alibi of defendant, falsification of excusatory proofs, to take measures safety in relation to the participants of side of prosecution.

Consider that all activity of investigators and workers of operative subsections of law enforcement authorities must submit the tasks of criminal pursuit as one of types of law-enforcement activity, the purpose of which is defense of rights and freedoms of person in the field of the criminal legal proceeding.

Operational investigative activity, as well as maintenances of state prosecution are the inalienable elements of criminal pursuit and pursue the purpose of exposure and exposure of persons, guilty in their feasance.

Operational investigative activity is directed on the assembly of proofs, which will ground the produced prosecution, supported a public prosecutor in a court in future.

Thus, in a court a public prosecutor is the official transmitter of accusatory power, supports a state prosecution, which is formed on the basis of proofs, got during realization of operational investigative activity and consequence actions.

This conclusion conforms to the norms of Law of Ukraine «About operational investigative activity», in accordance with which the task of operational investigative activity is a search and fixing of fact sheets about the unlawful acts of individuals and groups, responsibility for which is foreseen the Criminal code of Ukraine, reconnaissance-blasting activity of the special services of the foreign states and organizations with the purpose of stopping of offences and in interests of the criminal legal proceeding, and also receipt of information in interests of safety of citizens, society and state [6]. In essence, within the framework of pre-trial investigation and operational investigative activity the same work is carried out: exposure of persons which committed a crime, exposure them in the committed, receipt of proofs of guilt of accused, use of measures of forcing to those, who hinders bringing in to criminal responsibility of guilty persons, use of measures on the compensation of the harm caused a crime, liquidation of reasons and terms which abetted. Activity of workers of operative subsections of law enforcement authorities provides a state accuser necessary evidential material for maintenance of state prosecution.

However, a duty not only to give a court proofs, got during pre-trial realization lies on the side of prosecution, which are confirm validity and legality of prosecution. A public prosecutor must do it in form, which eliminates doubts for a judge in authenticity adduced guilt defendant. Persuasiveness of proofs of prosecution consists of great number of constituents: psychological linguistic, emotional factors; languages of body Consider et cetera, that exactly from operative accompaniment can depend foremost mental and physical condition of interrogated, his readiness to the interrogation in a court, his capacity for opposition an advocate, to the defendant, him emotional mood (confidence in it to safety, understanding of the role and value of the testimonies). Exactly in the close co-operating with the workers of operative

subsections work must be executed on preparation of witness to giving of testimonies in a court.

No less important work assignment with proofs in a court is legalization of information, got, by an operational investigative way in the stage of judicial trial. In practice rare enough cases, when the office of public prosecutor presents already on the stage of judicial trial those information which were got during operational investigative activity. As a rule, they will legalize on the stage of pre-trial investigation. However sometimes takes a place and so, that a public prosecutor in a court declares a solicitor about the interrogation of new witness for the prosecution or attaching of other materials to business. At all of contradiction of such tactical reception of side of prosecution, courts satisfy such solicitors often. Consider that public prosecutors need wider to utilize rights, foreseen p. 2 article 264 of CPC of Ukraine, that to put aside key witnesses for the prosecution to the decision stage and declare a solicitor about an interrogation as a witness of person which appeared in the judicial meeting. The task of operative accompaniment in a similar situation must be taken to that, to formulate convincing legend, why this witness was not interrogated on pre-trial investigation and was not plugged in the list of witnesses for the prosecution and why he appeared exactly presently. In the case of necessity of it it is needed to support the proper materials which will present a court (for example, those which testify that about an important witness it was known only now).

The special interest is presented by the problem of legalization during judicial investigation of information, obtained by an operational investigative way, by the leadthrough of consequence actions in the judicial meeting.

Thus, very often there is a necessity for drunk up workers, which conducted operative measures, announcements of documents the results of оперативно-розшукових measures were fixed in which. Sometimes in a court it is needed to conduct an interrogation investigation, investigative, witnesses and other participants of the legal proceeding or operational investigative activity, which would validify information, got during the leadthrough of those or other consequence actions.

It touches the judicial interrogation of operational workers, which conducted those or other measures, and also chief of organ which conducted operative investigative activity, foremost. Given out, that in the case of necessity after the rules of p. 6 and p. 7 article 303 of CPC of Ukraine those persons which gave information on confidential basis, and also operative workers which worked under a protection, can be interrogated in a court.

Considerable influence on internal persuasion of court corrects the removal of information from ductings of connection. It is Therefore important to ground legality of application of this operational investigative measure a public prosecutor (or analogical investigation action).

Unsealing of phonograms of public-call and other negotiations, got as a result of leadthrough of investigation action (item 187 CPC) or operational investigative activity, presented in quality proofs have a certain specific. One of problems there is interpretation of maintenance of those or other expressions, used persons, whose negotiations were fixed. Difficulties arise up in connection with the use of slang, conditional words. Arising ambiguities are explained to the benefit of the interested persons. As a rule, the side of defence in the judicial meeting tries to give innocent sense expressions defendant. Therefore employees which conducted the proper

measures must give a court such testimonies relatively, say, to the context talks which would take off all of doubts in interpretation of sense said by them.

On forming of internal persuasion of court the results of the use of the videotape recording, other hardwares, which fixed those or other circumstances which matter for business, have a considerable influence, during operative investigative activity or consequent actions. It is important at presentation of such materials in a court to ground legality, admission of their receipt. As well as in the previous case, here also an important role belongs the testimony of persons which conducted this operative investigative activity or investigation action. Their testimonies must work on strengthening of evidential value of accusatory proofs.

Operative workers which applied the special and other hardwares during the leadthrough of those or other operative investigative activity find out in a court. Sometimes such testimonies can have an independent evidential value.

Thus, preparation and providing of participating in a judicial trial as witnesses of those operative workers which got information in business during the operative investigative activity, is the element of operative accompaniment of maintenance of state prosecution a public prosecutor.

Other direction of co-operation of state accuser with the workers of operative subsections of law enforcement authorities is providing of safety of witnesses for the prosecution, victims and other persons, whose testimonies appear the office of public prosecutor in a court as proofs.

Consider that exactly on operative workers duties must be laid also in relation to preparation of witnesses for the prosecution to giving of testimonies in a court. Operative employees can give a help to the public prosecutor in getting information about a person, his copulas. They can conduct prophylactic measures, directed on that they did not have a desire to avoid giving of testimonies or change them for defense.

Except for questions, which decide within the framework of Law of Ukraine «On providing safety of persons, which take part in the criminal legal proceeding» from December, 23, 1993 № 3782-XII, there is a whole complex of problems of organizational, psychological character: how to deliver, where to place these people, how to protect from undesirable contacts in the building of the court and others, which must be decided by operative workers.

Another direction of the operative providing of activity of state accuser is an exposure of attempts of falsification of proofs from the side of side of defense. Preparation of perjurers defenders got considerable distribution. Exposure them in a court is a difficult enough task.

For cross-examination of such witness a public prosecutor needs exhaustive information about him, him weak and strong sides, copulas with a defendant, about negative facts from their biography, in a that number conflicts with a law but other All of it must give operative verification of such persons. On drunk up it must be utilized for verification of their testimonies, and in the case of necessity – discredit of their testimonies, injury of trust to them.

The indicated circumstances stipulate the necessity of operative development of potential perjurers. For this purpose within the limits of operative investigative activity it is expedient to fix the contacts of advocates, defendant with victims, witnesses, experts with the purpose of prevention of producing the court of untruthful information.

Thus, operative information, got about a person, biography of witnesses, specialists, solicitor about the interrogation of which turn up the side of defense, allows to develop a public prosecutor tactic them cross-examination.

To a great extent on efficiency of actions of public prosecutor information which is exchange a defendant between itself during delivery of them from an investigation insulator to the court influences in a court, in the apartment of court – to beginning and after the judicial meeting, with neighbours on a chamber, and also with persons which are at liberty. Task of organs which carry out operative accompaniment in the case in a court consists in the intercept of such reports. The method of receipt of information is indicated a «secret-service method got the name» [7, p.378]. Value of the indicated method for effective maintenance of state prosecution hardness to over-estimate, as he allows to find out any circumstances, related not only to the perfect crime but also information in relation to planned by a defendant or by his defender of measures of counteraction criminal pursuit. Legalization of such information directly in the judicial meeting is possible by their announcement after the statement of the proper solicitors a public prosecutor.

Influence on position of court is certain being and conduct carries out in the hall of the judicial meeting of relatives a defendant and persons which it is felt with them. A judicial trial must be organized so that meeting took a place in a quiet, working situation. All of destabilizing moments must in time appear and be removed from the hall of court. Tasks are indicated must decide jointly with judicial managers.

A public prosecutor must not scorn also socializing with the representatives of mass medias which can be invited the side of defense with the purpose of influence on a decret. A public prosecutor must not avoid meetings with them. His work with journalists, presentation to them information in advantageous for the side of prosecution light also must be organized and conducted with participation of the special services.

Thus, co-operating of public prosecutor with operative workers is the inalienable element of criminal pursuit, carried out in an identical degree not only on the pre-trial stages of criminal process but also in a court.

Basic directions of providing operative support of activity from maintenance of the state laying to the court are seen in the following: 1) producing the state accuser necessary evidential materials for maintenance of state prosecution; 2) providing persuasiveness, authenticity adduced guilt defendant; 3) preparation of witnesses to giving testimonies in a court; 4) legalization of information, got by operative investigative way on the stage of judicial trial; 5) legalization during judicial investigation of information, obtained a operative investigative way on the stage of pre-trial investigation; 6) providing of participating in a judicial trial as witnesses of those operative workers which got information in cases during the leadthrough of operative investigative activity; 7) providing safety of witnesses for the prosecution, victims and other persons, whose testimonies appear the office of public prosecutor in a court as proofs; 8) an exposure of attempts of falsification of proofs is from the side of side of defence; 9) intercept and revealing to the public prosecutor the reports which are exchanged by a defendant, with neighbours in a chamber, and also with persons which are at liberty.

In our opinion, the marked directions of realization of operative support of

activity of public prosecutor in a court must be taken into account during development of the unique theory of criminal pursuit, carried out by a public prosecutor in the judicial stages of criminal process, and find their reflection on the legislative level, including the project of the Criminal-procedural Code of Ukraine.

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