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Research Article

COLLECTION OF EVIDENCE THROUGH CRIMINAL PROVOCATION AND MEASURES TO PREVENT CONSOLIDATION

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Gafurov Mavlon Kuchkarovich
Independent Researcher Of Tashkent State University Of Law, Uzbekistan

ABSTRACT

This article analyzes the practice of collecting evidence as a result of criminal provocation, legislation of foreign countries on the regulation of this issue and the opinions of scientists, the socially dangerous consequences of criminal provocation, the legal gaps in the current national legal documents, and the problems in practice. In particular, the practice of creating artificial evidence as a result of criminal provocation and accusing a person based on it has been seriously criticized by the European Court of Human Rights and the Organization for Economic Development and Cooperation (OECD). The exact boundaries that distinguish criminal provocation from search activity have not been studied. On the basis of the above analysis, proposals are made to prevent cases of criminal provocation for collecting artificial evidence.

KEYWORDS

Provocation, artificial evidence, illegal collection of evidence, search operations, incitement to a crime, incitement to a crime.

INTRODUCTION

In practice, there are cases where law enforcement officers "organize" a crime, incite a person to commit it in various ways, or "create conditions" for the commission of a crime to receive artificial evidence and accuse based on them.

Such cases often found in criminal cases initiated on the basis of articles of the Criminal Code of the Republic of Uzbekista 131 (keeping a brothel), 135 (baby trade), 177 (illegal handling of currency values), 210 (taking bribes) .

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In order to persuade an individual can be used different methods: difficult financial situation of individuals or by constantly begging them or by making them interesting in a special way.

As a result, in most cases, a person becomes a victim of an "artificially created situation" that he did not actually intend to commit or is accused of a crime committed against his will and held accountable.

An example from practice. According to the judgment of the Yashnabad district court of Tashkent city on criminal cases dated January 18, 2019, on December 11, 2018 at 3:10 p.m., a citizen who had not committed any crime before, P.O.A. while he was at his house, a man and a woman he did not know knocked on his door, citizen P.O.A. when he opened the door, the man asked him to take him home and said he wanted to rest. Then the citizen P.O.A. refused and did not let them into his house. However, after 10-15 minutes, the man came back and asked to enter his house and offered 50,000 soums in return. Citizen P.O.A. agreed and let them into his house because he was in financial trouble and needed money to buy food. After receiving the money, he went out to the store to buy food, when he was stopped by the internal affairs officers and together they returned to his house and formalized the situation. The interesting part is that the internal affairs officers already knew what happened at his house, the citizen P.O.A. when he went out, he was stopped and brought back home, and a case was opened against him for the crime of keeping a brothel. There is no evidence or evidence that has ever put people in his house in this way in the case documentsof P.O.A .

A similar example can be seen in the judgment of this district court on December 17, 2018 against citizen P.S.G. According to it, the citizen P.S.G. while he was in his apartment, a young man and a girl, who were unknown to him, entered his house, and then the internal affairs officers entered his house together with the impartial ones who had been called in advance .

Similar examples can be found in many other criminal cases, in particular illegal drug dealing, bribery and can also be found in criminal cases related to human trafficking (especially baby trafficking).

“In fact, says K.K. Klevtsov, if there was a situation of incitement (provocation) by the law enforcement authorities, the criminal case should not be initiated, if initiated, the investigative body should terminate it immediately. In this case, it is necessary to consider the issue of criminal proceedings against the officials who conducted the search operation” .

The reason for the occurrence of such cases and the "problemless" use in practice is the existence of a legal gap in the legislation.

According to A.A. Atajonov, "even if such a situation is within the framework of rapid-search activities, the person involved in committing a crime as a result of it must meet a number of requirements in order to be accused of this crime, including the fact that he intended to commit a crime without the participation or influence of other persons, must have committed the crime voluntarily and consciously without any coercion, the person must have chosen the path of crime knowingly and independently” .

This opinion fully supported by S.D. Demchuk .

In fact, in Article 17 of the Law of the Republic of Uzbekistan "On rapid-search activities " adopted on December 15, 2012, it is strictly prohibited to divert and incite citizens to commit crimes by the bodies performing rapid-search activities.

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However, the "legal status" of evidence obtained as a result of such illegal actions was not defined in the current criminal procedural legislation.

The European Court of Human Rights has also expressed its position on this issue. According to it:

– analysis of criminal cases shows that crucial evidence was obtained through covert operations. Law enforcement must be convinced that they have enough information to conduct an undercover operation.;

– such information, in turn, may be recorded during covert surveillance using special technical means, as well as by recording telephone or other conversations;

– only the information that the person was involved in a previous crime, or the applications of the investigative bodies, which are not supported by the relevant facts, are not enough;

– any action that can be considered as pressure on a person to commit an offense is considered illegal intervention of law enforcement agencies. For example, if a person acting under the covert control of the police, on his own initiative, makes repeated requests to the drug dealer (despite the initial refusal), or extorts, increases the price, makes excuses that he is "spoiling" and so on;

– before or during the rapid-search operation, the seller of drugs (as an example - it can be any other type of crime) must independently inform or offer to sell drugs. Such facts must also be documented by wiretapping or audio recording .

This problematic situation in the legislation was also noted by Economic cooperation and development organization (OECD) within the framework of the 4th round of monitoring of the Istanbul action plan to combat corruption .

Accordingly, within the framework of scientific research, a specific proposal for amending the legislation was developed and recommended to the authorities.

According to it, Article 88 of the Criminal Procedure Code of the Republic of Uzbekistan was supplemented with a new paragraph 4.

Now the law prohibits inducing a person to commit illegal actions and accusing him of a crime committed as a result of such inducement.

In fact, it is no exaggeration to say that these changes to the legislation are "revolutionary" in the conditions of Uzbekistan. The reason is that such negative actions will be stopped in the future. People who actually have no criminal intent will be denied the opportunity to be held accountable because of an artificial crime organized by others.

In addition, it is important to assess the social danger of this behavior, i.e. encouraging a person to commit a crime, creating artificial evidence by organizing a crime (provocation).

In the explanatory dictionaries of the Uzbek language, it is noted that the word "provocation" means a malicious act or behavior that is deliberately organized and leads to serious consequences, conspiracy, incitement .

Although this act is considered socially dangerous, the current Criminal Code of our country does not provide for a special article that determines direct criminal responsibility for it.

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Article 230-2 of the Criminal Code of the Republic of Uzbekistan provides criminal responsibility for falsifying the results of investigative activities, according to which "for the purpose of criminal prosecution of a person who is not related to the commission of a crime, or for the purpose of harming a person's honor, dignity and professional reputation falsification (forgery) of the results of operational search activities by persons authorized to implement operational search activities" shall be deprived of liberty for a term of up to three years.

At first glance, this provision seems to include liability for criminal provocation. However, if the substance is analyzed carefully, one can be sure that this is not the case.

First of all, the provision of this article talks about falsification (forgery) of the results of investigative activities, that is, the authorized person to be criminally liable under this article, the results of investigative activities that already exist (indicating the guilt of another person) are not related to the commission of this crime in advance must have falsified (falsified) a known person for the purpose of criminal prosecution.

In addition, in accordance with Article 8 (principle of conspiracy) of the Law of the Republic of Uzbekistan dated December 25, 2012 "On Rapid-Search Activity", rapid-search activity is carried out in accordance with the principle of conspiracy, that is, conducting quick search activities, information with the nature of quick search a separate procedure for obtaining, issuing, storing and using it, as well as the rules for handling documents with a fast-service nature, is carried out .

In other words, the results of the rapid-search activities, which are obtained, formalized and stored in a confidential manner, are "in the hands" of the persons who carried out these activities. Secrecy provides opportunities to falsify and "twist" them.

To prevent these criminal cases the Criminal Code was provided with Article 230-2 by the Law of April 4, 2018 .

In the case of criminal provocation, on the contrary, the rapid search activity (event) itself is organized in order to criminally prosecute and "capture" a person who is not related to the commission of a crime, and by organizing a criminal situation, artificial evidence and a new criminal case are created.

Accordingly, we can say that Article 230-2 of the Criminal Code does not provide for criminal liability for criminal provocation.

However, in the Criminal Codes of the foreign countries, including Russia , Belarus , Kazakhstan , Kyrgyzstan , Tajikistan , Georgia a special norm has been established that strengthens this act as a crime and the corresponding liability is established.

In the Criminal Codes of Russia, Belarus, Kyrgyzstan, and Tajikistan, criminal responsibility is established mainly for "provocation of bribery", while in Kazakhstan and Georgia, any kind of provocation of a crime is considered a crime.

In particular, the Criminal Code of the Republic of Kazakhstan. According to Article 412-1, criminal provocation means interest (incitement) or blackmail to commit a crime by an official carrying out investigative activities before the court, with the aim of later exposing and prosecuting a person. The article stipulates a penalty of up to ten years of imprisonment.

The US Model Penal Code (Article 2.13) recommended that states include a separate article for criminal provocation in their codes. Section 40.05 of the Penal

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Code of New York State (1965) defines this offense as "entrapment" .

In this regard, taking into account the high social danger of the act, a special article is introduced into the Criminal Code of Uzbekistan in the following version, which stipulates the establishment of criminal responsibility for "criminal provocation", with the part providing for aggravating responsibility for the commission of a serious and extremely serious crime. filling is offered:

“Article 2303. Criminal provocation

1. Criminal provocation, i.e. interest (incitement) or blackmail to commit a crime by an official carrying out rapid search or preliminary investigation activities with the aim of later exposing and prosecuting a person, -

shall be punished by deprivation of liberty from one to three years by deprivation of certain rights.

2. If that act was committed by using force that is not dangerous to life and health, or by threatening to use such force, or because of financial, service, or other dependence, -

shall be punished by deprivation of liberty from three to five years by deprivation of certain rights.

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