



 Research Article

USE OF THE OPPORTUNITIES OF INSPECTION AND INVESTIGATIVE ACTION IN THE CRIMINAL-PROCEDURAL LEGISLATION AND PRACTICE OF FOREIGN COUNTRIES

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ABSTRACT

The article describes the norms of examination in the criminal procedural legislation and practice of the Federal Republic of Germany, Japan, China, the Russian Federation, the Republic of Kazakhstan and a number of other foreign countries.

KEYWORDS

Examination, additional examination, re-examination, examination of living persons, examination of physical evidence, procedure for examination of documents and corpse.

INTRODUCTION

Surveillance is an extremely important piece of evidence in any criminal case. Based on this, many procedural and criminological scientists emphasize the effectiveness of using this investigative action.

According to A.A.Toporkov and V.A.Obrasov, "Inspection is one of the investigative actions that examines material objects in criminal cases through direct perception of the object's signs with the investigator's senses, as well as tools and experimental methods." [1]

A.Ya.Ginzburg and A.R.Belkin, "Investigation is an investigative act carried out by an investigator, and in his absence, it is an act carried out by an investigator or a senior officer of an investigative body who has received information about the commission of a crime." In spite of the above detailed definition, in our opinion, even if the nature of the inspection investigation action is not fully disclosed, it is not difficult to find out the scope of the persons authorized to conduct this action. [2]

We can see that A.N.Gusakov and A.A.Flyushenka defined the full and precise content of the

investigation action "Review". According to them, "The act of inspection is carried out by an investigator with the participation of persons specified by law, to determine the situation of the incident, traces, material evidence and other details important for the case, the condition, nature of material objects. It is an investigative action aimed at directly understanding, recording, and evaluating the signs.[3]

Many of the definitions that we are considering regarding the investigative action of inspection mainly refer to the legislation, theory and practice of the CIS countries. In several other countries, including the United States, France, India, Kazakhstan, Britain, and others, we can find different definitions of the investigative act of inspection. In some countries, not only the legal definition of surveillance, but also some differences in its tasks, objectives and types exist. For example, in the legislation of some countries, witnessing is interpreted as a type of investigative action.

Now let's look at the laws of foreign countries on inspection.

Japanese Criminal Procedure Code. The Japanese criminal procedure code and legal system in general is a system belonging to a unique mixed legal family. Part 2 of the JPK of Japan is called "First Instance" and its first chapter is called "Inquiry and Investigation", according to its Article 222, Clause 1 of Article 99, Article 100, Articles 102-105, 110-112 of the Code. -Articles, Article 114, Article 115 and Articles 118-124 rules are applied by the expert. In accordance with the provisions of Article 218, Article 220 and Article 110, Article 111-2, Article 112, Article 114, Article 118, Article 129, a prosecutor, assistant prosecutor or judicial police official, Article 131 and 137 -Articles 140, the prosecutor, assistant prosecutor or judicial police official conducts an inspection investigation in accordance with the

provisions of Article 218 or Article 220, and the possibility of involving an expert in these processes, but the decisions provided for in Articles 122-124 are also rejected by the judge it is possible. In this code, search and investigation actions are explained in the articles related to inspection. For example, in accordance with the provisions of Article 220, personal search of a suspect requires urgency, but does not require compliance with the provisions of paragraph 2 of Article 114.[4]

According to Articles 116, 117, 218, a prosecutor, an assistant prosecutor, or a court, police official may involve an expert in the process of search, seizure, or confiscation of records.

Prosecutors, assistant prosecutors, or court, police officials may not enter a person's residence or buildings guarded by a person or a ship before sunrise or after sunset for inspection, except if the warrant contains a written document that permits the search at night.

When browsing begins before sunset, it may continue after sunset.

When it is necessary during the search, seizure or examination in accordance with the provisions of Article 218, the suspect may also participate in these processes with the permission of prosecutors, assistant prosecutors or court, police officials.

Those who obstruct review processes must be subject to non-criminal fines or reimbursement of costs incurred as a result of the obstruction, subject to a motion for costs.

Part I of the Code is called "General Provisions" and its 10th chapter is called "Inspections". According to Article 129 of this code, necessary measures should be taken to prevent the inspection of persons and objects,

exhumation of the grave, and destruction of objects during the inspection.

According to part 1 of Article 130, persons conducting a criminal case may not enter the owner's residence or building to conduct an inspection before sunrise or after sunset without the owner's consent.

When the inspection starts before sunset, it can be continued after sunset.

According to part 1 of Article 131, the procedure of identity verification and witnessing must be strictly observed, taking into account the gender, physical condition and other circumstances of the person being testified. The dignity of the person being testified should not be harmed.

It is mandatory for a doctor or an adult woman to participate in court examinations and examinations during the witnessing and examination of women.

According to Article 132 of the Criminal Procedure Code, the court may summon a person other than the accused to the court or to a designated place to testify.

German Criminal Procedure Code.

Article 87 of the Code of Criminal Procedure is called examination of the dead body. Inspection is carried out by the prosecutor's office. This investigative action is carried out with the permission of prosecutors and judges and is carried out in the presence of a doctor. It is not necessary for the doctor to participate in the process of determining the situation if there are no external signs of crime on the corpse, if there is no need for his participation.[5]

An autopsy is performed by two doctors. One of the doctors is required to be an expert of forensic medical examination institutions or the head of this institution.

It is forbidden for the medical worker who took care of the corpse to examine the corpse while it was still alive.

But the participation of this doctor in the process of examining the internal organs (dissection) of the corpse is considered to be involved in order to inform about the conclusions of his medical history. Prosecutor's office employees may participate in the internal examination of the body. At his request, a judge can also participate in this process. If the body is officially buried, then an exhumation process is carried out. Exhumation is carried out based on the judge's decision. When there is a risk of harming the results of the investigation or prolonging the process by the prosecutor's office, it is allowed to carry out this investigative action with the issuance of a decision.

If an exhumation is scheduled, the relatives of the dead person will be notified at once. This situation is carried out when it is not difficult to find relatives and when it is concluded that the exhumation process is not at risk.

If the cause of death is suspected to be a criminal act, an autopsy is required. The peculiarity of the German JPK is that the prosecutor's office is in charge of the preliminary investigation, there are no separate independent investigative bodies, besides, the court does not require the participation of a medical expert, the participation of other persons is not only not taken into account, but also prohibited. There is no need for impartial participation, because the work of the prosecutor's office is not viewed with suspicion.

In our opinion, it is required to exclude the question of the participation of impartial in the action of the review investigation from the JPK. Instead of these cases, it is considered appropriate to include a modern technology 3D photography system in the process. This situation, in turn, creates an opportunity to fully see and understand the situation.

An autopsy is performed when there is a suspicion that the death was caused by someone else's influence or when the time of death has not been determined. The consent of the relatives is not required for internal examination of the corpse. In addition, in some cases, the relatives are not informed about the investigation if there is an assumption that they may endanger the process. But in these processes, an appropriate decision of the court is required.

Chinese Criminal Procedure Code. According to Chapter 4 of the Chinese JPK, inspection and witnessing are defined as investigative activities.

According to Article 101 of the Criminal Code of China, examination and testimony may be conducted in relation to the crime scene, corpse, object, person. In some cases, when there is a need for the knowledge of special knowledge holders during the examination and testimony, they are invited and use their knowledge under the guidance of the investigator.[6]

According to Article 102 of the Code, any organization or specific person is responsible for the security of the crime scene, the loss of evidence, and reporting of the crime to the relevant HMQOs. In our opinion, the introduction of the responsibility of the owners of the crime scene and the obligation to report the crime to the National Criminal Investigation Department will provide an additional opportunity for the quality of these processes.

According to Article 103, the investigator must carry his certificate during the investigation of the investigation and witnessing.

According to Article 104, the public security authorities shall make a decision on the internal examination of the corpse and inform his relatives where this process will be conducted.

According to Article 105, the investigator conducts a witness investigation in order to determine the specific characteristics of the victim, the suspect, damage to health and physical identity.

If the suspect is dissatisfied with the conduct of the investigative act, but the investigator considers it appropriate, this investigative act shall be conducted compulsorily. Testimony for a female person may be performed by a female employee or doctor.

According to Article 106, a report on the results of the inspection and witnessing investigation shall be drawn up and signed by the person who conducted this investigation.

According to Article 107, if the public prosecutor's office comes to the conclusion that it is necessary to re-conduct the investigation actions carried out by the public security implementing bodies, they can demand the re-conduct of these investigation actions or ensure the participation of their employees in these processes.

Article 108 describes the procedure for conducting an investigative experiment.

According to Article 114, if the objects and documents obtained during the inspection and search serve to prove the guilt of a person in committing a crime or to prove his innocence, they are required to be confiscated, and objects that are not related to the criminal case cannot be confiscated.

The removed items and documents cannot be stored properly, or used for any purpose or damaged.

Taking into account the above, the following conclusions can be drawn:

- inspection is explained in the criminal procedural codes of many countries along with investigative actions such as testimony, exhumation, search;

- the types of inspection investigative actions are less than the types of inspection in our national legislation. Most laws do not include inspection of buildings, structures, surroundings, and documents. But the advanced norms of many foreign countries are not present in our national legislation;

- if the inspection process is conducted at a person's residence, it is established that it should be conducted on the basis of a judge's sanction.

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