

YURIDIK FANLAR AXBOROTNOMASI

ВЕСТНИК ЮРИДИЧЕСКИХ НАУК

REVIEW OF LAW SCIENCES



huquqiy ilmiy-amaliy jurnal

правовой научно-практический журнал

legal scientific-practical journal

2021/3



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THE ISSUES OF USING THE POSSIBILITIES OF TECHNICAL MEANS AND ELECTRONIC EVIDENCE IN THE CRIMINAL PROCEEDING OF UZBEKISTAN

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Abstract. This article details the features of using modern technical means and the issue of electronic evidence in the process of collecting evidence in the criminal process of the Republic of Uzbekistan, analyzes the opinions of various scholars in this field and the norms of the criminal procedure law of several states. Based on the results of analyzes and studies, the author disclosed some legal gaps existing in the criminal procedure legislation and developed proposals and recommendations for introducing appropriate changes to some norms of the Code of Criminal Procedure of the Republic of Uzbekistan.

Keywords: evidence collection; electronic evidence; modern technical means; electronic criminal case; electronic information; copying of electronic information; digital information carrier.

ЎЗБЕКИСТОНДА ЖИНОЯТ ПРОЦЕССИ ЖАРАЁНИДА ТЕХНИК ВОСИТАЛАР ВА ЭЛЕКТРОН ДАЛИЛЛАР ИМКОНИАТЛАРИДАН ФОЙДАЛАНИШ МАСАЛАЛАРИ

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Аннотация. Ушбу мақолада Ўзбекистон Республикаси Жиноят процессида далиларни тўплаш жараёнида замонавий ахборот технологияларидан фойдаланиш ва электрон далиллар, қолаверса ушбу соҳадаги турли олимларнинг фикрлари ва жиноят процессуал қонунчилиги нормалари таҳлил қилинган. Таҳлил ва тадқиқотлар натижалари асосида жиноят процессуал қонунчилигида мавжуд бўлган айрим ҳуқуқий камчиликлар очиқ берилган ҳамда Жиноят-процессуал кодексининг айрим нормаларига тегишли ўзгартириш киртиш бўйича таклиф ва тавсиялар билдирилган.

Калит сўзлар: далиллар тўплаш; электрон далиллар; замонавий техник воситалар; электрон жиноят иши; электрон маълумотлар; электрон маълумотларни нусхалаш; рақамли ахборот ташувчи.

ВОПРОСЫ ИСПОЛЬЗОВАНИЯ ВОЗМОЖНОСТЕЙ ТЕХНИЧЕСКИХ СРЕДСТВ И ЭЛЕКТРОННЫХ ДОКАЗАТЕЛЬСТВ В УГОЛОВНОМ ПРОИЗВОДСТВЕ УЗБЕКИСТАНА

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Аннотация. В статье подробно рассматриваются особенности использования современных технических средств и проблема электронных доказательств в процессе сбора доказательств в уголовном процессе Республики Узбекистан, анализируются мнения различных ученых в этой

области и нормы уголовно-процессуального законодательства Республики Узбекистан. По результатам анализа и исследования автором выявлены существующие пробелы в уголовно-процессуальном законодательстве, разработаны предложения и рекомендации по внесению соответствующих изменений в некоторые нормы Уголовно-процессуального кодекса Республики Узбекистан.

Ключевые слова: сбор доказательств; электронные доказательства; современные технические средства; электронное уголовное дело; электронная информация; копирование электронной информации; цифровой носитель информации.

It is difficult to imagine the process of collecting and registering evidence without modern technical means. This is due to the fact that the subjects collecting evidence, in the course of investigative and other procedural actions, in the collection of material evidence and their procedural consolidation, widely use the capabilities of technical means.

In this regard, the transition, on the basis of the Decree of the President of the Republic of Uzbekistan dated May 14, 2018 No. PP-3723 "On measures to radically improve the system of criminal and criminal procedural legislation" the draft "Electronic Criminal Case", as well as the introduction on the basis of the Law of the Republic of Uzbekistan dated April 4, 2018, No. ЗРУ-470 "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Adoption of Measures to Strengthen the Guarantees of the Rights and Freedoms of Citizens in judicial and investigative activities"[2] in part 4 of article 91 of the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC), a procedural provision, according to which, the fixation of procedural actions in the form of an inspection of the scene of an the place of the event, an investigative experiment using video recording means is compulsory, created the basis for improving the use of the capabilities of technical means and electronic evidence in proving.

However, today the conditions for the use of modern technical means when collecting and fixing evidence, procedural

conditions and rules for their application are not sufficiently regulated by the current Criminal Procedure Code. In our opinion, the subjects collecting evidence in the course of investigative and other procedural actions should give permission to use technical means only in cases where they meet the following conditions:

1) are safe for life, health of people and the environment, and also fully comply with safety rules;

2) do not humiliate the honor and dignity of a person;

3) do not contradict the requirements of the current legislation and by-laws;

4) meet the minimum requirements under which they do not lose their evidentiary value when collecting evidence (part 3 of article 911 of the CCP). Failure to comply with these conditions when using technical means can, firstly, lead to the subsequent recognition of evidence as inadmissible, and secondly, violate the rights and legitimate interests of citizens, enterprises, institutions and organizations in the process of proving.

The corresponding settlement of this issue in the Criminal Procedure Code of a number of foreign states can be assessed as a positive experience. So, in accordance with part 3 of article 96 "Scientific and technical means in the process of proving" of the Criminal Procedure Code of the Kyrgyz Republic, the use of scientific and technical means is recognized as permissible if they:

1) do not contradict the norms and principles of this Code;

2) scientifically substantiated;

3) ensure the effectiveness of the proceedings on the case;

4) are safe for life, health of citizens, property and the environment [3].

The use of technical means is carried out at the initiative of the investigator or at the request of the participants in the investigative action. The investigator has the right to attract a specialist to provide assistance in the use of technical means [4, p. 8-10]. When collecting and receiving in the course of an investigative action evidence in the form of photo, sound and video recordings, electronic documents, they are shown to all participants in the investigative action, recorded on flash drives, disks or other technical means capable of carrying information in electronic form, packed in a package, sealed, recorded in the protocol and stored in the criminal case with the signatures of all participants in the investigative action.

It should be noted that today, with the development of modern technical means, the growth of crimes in the field of information technology and security, the emergence of new information and communication systems and infrastructure, “virtual spaces” that allow cybercrimes to be committed at the international level, the activation of hacker communities, their widespread involvement into a criminal environment [5, p. 28], the activity of collecting electronic evidence and working with them in judicial and investigative practice lags behind. In the CPC, the concept of “electronic evidence” and the issues of their use in proving are also practically not regulated.

The transition on the basis of the Decree of the President of the Republic of Uzbekistan dated May 14, 2018 No. PP-3723 [1] to the phased digitalization of the procedure for criminal proceedings carried out within the framework of the pilot project “Electronic Criminal Case”, as well as introduction on the basis of the Law of the Republic of Uzbekistan dated April 4 2018, No. ZRU-470 [2] in part 4 of article 91 of the Criminal Procedure Code

of the Republic of Uzbekistan, the procedural provision, according to which the fixation of procedural actions in the form of an inspection of the scene of an especially serious crime, a search, verification of testimony at the scene of an experiment with the use of video recording means is mandatory, will give an opportunity for the widespread use of modern technical means in the process of proving and expanding, in a certain sense, the capabilities of “electronic evidence”.

The use of advanced methods in the collection and consolidation of evidence, the adoption of measures for the effective use of modern forensic technology, information and communication technologies and forensic capabilities should be considered as the most important tasks of forensic practice. Judicial practice testifies to the lack of compliance with the requirements for solving this crime, the lack of the possibility of collecting evidence, the lack of knowledge and skills among the subjects carrying out proof in this area.

In this regard, the coverage of all stages of the criminal process by the electronic criminal case system in the future will create an opportunity to receive electronic information for the participants in the process, to carry out departmental and prosecutorial control in electronic form, automate reporting, transparency of the criminal process, and minimize the risk of document forgery. Elimination of the risk of disappearance of criminal cases, electronic exchange of information with ministries and other departments, obtaining expert opinions and court sanctions, as well as in connection with the electronic transfer of criminal cases to others, will create the opportunity to save a lot of time.

In order to ensure the implementation of the Decree of the President of the Republic of Uzbekistan No. PP-3723 [1], members of the working group consisting of representatives of the General Prosecutor’s Office, the Ministry of Internal Affairs, the Supreme Court, the

Department for Combating Economic Crimes, the Bureau of Compulsory Enforcement and the Customs Committee at the Center for the Implementation of Information and Communication Technologies Bureau of Compulsory Enforcement The Center under the General Prosecutor's Office of the Republic of Uzbekistan introduced a preliminary project "Electronic Criminal Case", the investigation departments under the Departments for the coordination of the activities of the Department of Internal Affairs of the Yakkasaray and Mirabad districts of Tashkent were equipped with the necessary technical means [6, p. 32-38]. Despite the fact that at present this system is being tested by employees of the criminal courts, prosecutor's office and internal affairs bodies, the Tashkent city department of the State Customs Committee, the Bureau for the Execution of Punishments and the Department for Combating Economic Crimes, due to the fact that it is not fully connected to the relevant state bodies, enterprises, institutions and organizations, information centers, it does not give a sufficient effect in collecting and recording evidence in electronic form.

Meanwhile, it is required to consolidate the legal basis for the use of electronic resources when proving in a criminal case, that is, the procedural consolidation in the CPC of such concepts as: "electronic criminal case", "electronic evidence" [7, p. 13], [8, p. 11-12], "digital electronic media" [9, p. 15], "electronic information", "copying of electronic information", "electronic document" [10, p. 9]. Proceduralization of the legal foundations of these concepts and the definition of the conditions associated with them, as well as the regulation of the mechanisms of their work, elimination of problems associated with the collection of evidence in practice, will prevent red tape and lead to significant savings in time spent.

The second part of Article 81 of the CCP provides that evidence is established by protocols of investigative and judicial actions and other documents. This procedural

provision does not deny that they can be in the form of "electronic evidence".

However, the application of conditions and mechanisms in the process of establishing, collecting, checking and evaluating evidence in relation to the concept of "electronic evidence" can lead to some misunderstandings. In addition, "electronic information" or "electronic evidence" has its own characteristic, which manifests itself in the following: firstly, since "electronic information" or "electronic evidence" is closed and stored on special means, not everyone has the opportunity to use it openly, and its establishment seems to be a certain difficulty, in addition, for the detection and study of "electronic evidence" requires the implementation of search actions aimed at a specific target in the virtual space [8, p. 11-12]; secondly, they require specialists with special knowledge in the use of sources of storage of "electronic information" or "electronic evidence", that is, modern technical means (mobile phone, computer, flash drive, laptop, smartphone, tablet, terabyte, etc.), thirdly, a person who has "electronic information" or "electronic evidence" has the ability to easily delete it; fourthly, unlike information that has evidentiary value and is reflected in an object or thing, the possibility of denying the accuracy of "electronic information" or "electronic evidence" and the characteristics it contains is limited; fifth, the presence of memory with a large volume, simplifying the transfer of information and copying information data from one medium to another [9, p. 10]; sixth, the availability of opportunities for wide familiarization of electronic data with the content of their carriers through global information telecommunication systems.

Electronic evidence will, of course, initially appear in the form of electronic data. For electronic data to be recognized as evidence, the information contained therein must comply with the circumstances set out in Article 81 of the CCP.

Electronic information may contain data received in accordance with the procedure established by the Criminal Procedure Code, in the required and provided photos, audio, video and other media. In such cases, the electronic information must be accepted as evidence, and an appropriate decision must be made. It is necessary to ensure the attachment of electronic information to the case file and its storage on electronic media. When electronic information is copied to another device, it must retain its evidentiary value [10, p. 10].

In the conditions of rapidly developing information and communication technologies, mobile phones, computers, flash drives, laptops, smartphones, tablets and cloud storage in them can be used as information carriers and technical means of storing electronic information.

Based on the above, we consider it expedient to supplement part 2 of Article 81 of the Criminal Procedure Code of the following edition: "These data are established by: testimony of a witness, victim, suspect, accused, defendant, expert opinion, material evidence, sound recording, video recording and film photography, electronic data in any form, protocols of investigative and judicial actions and other documents".

In our opinion, the introduction of this addition to the second part of Article 81 of the CCP will clarify terms such as "electronic criminal case", "electronic evidence", "digital electronic media", "electronic information", "copying of electronic information", "electronic document", and will contribute to the elimination of existing gaps.

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