

METHOD OF COMMITMENT OF CRIMINAL OFFENSE AS INDICATION

Jetmire ZEQIRI

Faculty of Law, University of Tetova

Abstract

By undertaking various criminal activities, most of the perpetrators leave traces behind themselves which can be manifested according to the object of the attack, place, time, tools and actions undertaken in the preparatory phase, during the commission of the crime and after it. If it is proven that there are specific circumstances that point to the mentioned elements, it is highly possible that they will result in the basis of suspicion of the combination of the committed acts, namely the circumstances that they were committed by the same person, or the same group. In the operational work, it starts with the known perpetrators who are included in the criminal records precisely because of the appearance of such features in the commission of criminal acts, while in fact they were able to commit the new criminal act as well. Also, the surprise capture of the perpetrator in the act, i.e. his discovery in another way, is the basis for his involvement in other unrelated criminal offenses which were committed in the same way as for the offense for which he is deprived of his liberty¹.

In the daily operational work, the official authorized persons discover a whole range of operational information with an indicative character - informal indicative evidence which usually serves as a guide of its own kind in the further work. Indices or grounds of suspicion (indicia - sign) - the grounds of suspicion are facts and circumstances which more or less indicate the existence of a criminal offense and the close or distant connection of the offenses with any person who directly committed, or is indirectly related to the work. Those in criminal processing are a necessary guide, based on which it can be concluded with greater or lesser certainty that it is about the specific criminal offense and that the specific person could be the perpetrator of it or the offense other criminal. In addition, the indices combined with the others, with the direct evidence complete the argumentative material, therefore it is no coincidence that the criminal police relies a large part of its activities precisely on the collection of operative information².

Keywords: evidence, victim, crime, criminal offense, perpetrator of the criminal offense, etc.

1. Introduction

The notion of index in criminal procedural law and in criminology is not the same. The index in the procedure is the fact which proves that her opinion as evidence could be established the other fact. The criminalistic index includes all the argumentative facts (procedural meaning of the index), but also other circumstances which criminalistics takes as an index. A large number of indices such as the polygram, operative notes on the suspect's character traits, statements in the informative conversation, cannot be used as evidence in the criminal procedure. So, they can be argumentative facts, but in the criminalistic sense they are evidence. B. Pavishić, 200/70). For the definition of the concept of index and its argumentative force, the connection established between the index and the main fact is important. To the indices this connection is of multiple importance, because it offers the possibility to seek different interpretations, i.e. to have more possible meanings. This means that the procedure body must plan many versions of the possible meaning of this connection until the truth, the complete meaning, is established. We are seeing that the indices are the

¹ Aleksić Ž., 1982, 79 Kriminalistika, Beograd.

² Prof. Krivokapic V, I Korajlic N.(Krivokapiv V 2005, 107-113, Korajlic N, 2006, 427- 433)

<https://doi.org/10.62792/ut.jus.v12.i21-22.p2751>

indirect evidence in which it is necessary to establish and verify the accuracy and reliability of the argumentation. In direct evidence, with the confirmation of accuracy and reliability, the argumentation process is completed. In the circumstantial evidence, the second phase is also necessary, oriented towards proving a true meaning of the connection between this evidence and the main fact from many possible connections. From what has been said, it is clear that the circumstantial facts can only be assessed as possible, which means that their connection with the object of argumentation exists as assumed (reliable, possible).

Only when the index system is built, which will exclude the versions of the case connection between the index facts and the objects of argumentation, the authenticity falls. Many crimes, especially serious crimes, are committed secretly, so that no one has noticed the perpetrator. For this reason, prosecutors and criminalists in such cases are oriented only to the collection and use of indices to prove the existence of the criminal offense and to find and discover the perpetrator. This activity is directed at two basic sources: operational information from personal sources and operational information from real sources. However, the index is reached in different ways and from different sources³.

2. Means of committing the criminal offense as an index

In the type and characteristics of the means of committing the criminal offense, the way of committing the criminal offense, the traces found and the parts of the means used, but also the testimonies of the direct witnesses of the injured, of the victim and others can prove. After determining the group affiliation of the used tools, it is important, among other things, to find answers to the following questions: what are those tools, is a special profession necessary for their use, who produces them or sells them, who owned them or still owns them, who had access to them, does the suspect possess them, etc.

The means that are assumed or more or less known to have been used for the commission of the criminal offense can be found during the search of the scene, through control and search, the use of the official dog, based on the evidence related to that where they are found, to whom they were sold or given, where they were thrown or destroyed. After finding such tools, it is necessary to verify the evidence: could the consequences of the committed act have been caused by the tools that were found; have the means been found in terms of chemical composition and other characteristics identical to the material found at the place of burning; were the tracks at the scene caused by illegal vehicles; in the found tool or its packaging, are there any traces of the place of burning and of the perpetrator of the crime; is it possible to match the parts of the object found at the scene; direct witnesses may recognize and identify the tool used.

Based on the found means of committing the criminal offense, it is not easy to conclude the identity of the perpetrator, since the perpetrators can also use the means that are not the property of not in their possession nor in permanent possession and have no known owner (they were taken surreptitiously), therefore they are intentionally left at the scene or entered with the intention of pretending. In the work of illuminating the criminal offense, in addition to the means of commission, other objects can be found which can show for the leader's superstition, his belonging to a certain profession, as well as for the ethnic and microgeographical characteristics of the region from which he comes, etc.

³ Prof. Krivokapic V, I Korajlic N.(Krivokapiv V 2005, 107-113, Korajlic N, 2006, 427- 433)

3. Suspicious behavior (as an index) of a certain person

The suspicious behavior that appears as a result of the psychological load of the perpetrator caused by the criminal offense (due to the awareness of the offense, the feeling of guilt and the fear of discovery, judgment of the district and punishment), is not manifested to the same extent and in the same way in all persons. Up to the small appearance or even the complete absence of the suspicious behavior of the perpetrator of the criminal offense often appears because he has a completely different system of values from the one recognized in the given society. Such a case is usually with the perpetrator of the criminal offense if he has realized a certain benefit, has chosen a long-term problem, has achieved some major goal, etc. The perpetrator of the offense can attract attention, among other things: mearrati; hiding; with the frequent change of residential address; with the carrying of false documents; with the change of physical appearance, nickname and habits (seeking solace in alcohol, spending too much money on games of chance and gambling, etc.); using signs of superstition; returning to the scene; appeared himself as a suspect for the commission of a minor criminal offense; colluding with other suspects; looking for a buyer for a particular item; presenting the feigned criminal offense; with the introduction of false evidence; by writing anonymous letters in which he writes about the alleged motives of committing the crime and the perpetrator; the excessive interest in the results and in the direction of the action of the investigative bodies (from the moment of securing the scene and viewing it) for the appearance of the witnesses and for what they talked about; for the great need to talk about the event (even when others, considering it resolved, have forgotten it); by not responding to calls and avoiding meeting with the police; with excessive complaints or simulation of illness and emotional state during the interview; with resistant attitudes and weak reasoning during the informative conversation; by trying to understand the definitive opinion of the police about the incident during the conversation; the provision of an alibi for the specified time (despite the fact that the time of the event was not specified during the illumination of the event, i.e. it is not known to others); with the presentation of careless details which could be known only to the participant of the work.

In the end, it should also be shown that the frequent trips of persons without any clear reason present suspicious behavior which does not mean that it is a psychomotor consequence of the perpetrator's concern, but an important condition for the successful commission of some criminal offenses (fraud, illegal trade and smuggling , robberies or violent burglaries, banditry, distribution of counterfeit money, espionage, etc.).

4. Character of the leader (as an index)

Character is a psychophysical characteristic of the personality, which, in accordance with adequate regulatory principles, must control human reactions, for which it is presented as an important orienting and eliminative index. The committed act can be more or less indicative of the personality of the perpetrator (brutality, cruelty, sadism, perfidy, perversity, cunning, indifference, volatility, etc.). This circumstance is very important in the case of the discovery and illumination of criminal offenses which occur rarely, in which case the object of the attack, the place, the time, the way and the means of execution show certain specifics. In such situations it is usually more important to give the right answer to the question; who was able to commit the criminal offense in question? Therefore, it is necessary to be careful that the committed criminal offense may also be contrary to the general character of the person's personality and previous behavior. This is especially important when the commission of the offense is accompanied by the coincidence of unusual circumstances. On the other hand,

doing good deeds and behaving correctly can only be a front behind which one can hide one's true personality and hidden criminal activity.

5. Physical properties of the leader (as an index)

The facts that indicate the physical characteristics of the perpetrator (gender, personal description, specific gestures and gait, color and other forms of voices) can be determined on the basis of the way of committing the criminal act (murder by asphyxiation), the object (especially clothing) and traces found at the scene, the evidence obtained from the witnesses, the victim, the injured party or another person, as well as on the basis of other relevant evidence (the great weight of the object taken, the debris on the broken wall, etc.).

6. Presence at the scene as an index

The finding of presence at the scene of the event is grounds for suspicion. In this case, it can be established whether the police encountered the person at the scene of the incident, through the objects and traces that he left at the scene of the incident, i.e. those that resulted from the scene of the incident, but were found on him, with the help of information received from citizens, based on the knowledge of the usual situation in the specified place and by using the official dog. In the operative work of planning based on these indices, great care must be taken, considering the possibility of camouflage of traces and objects (in order to orient to the wrong person, then care must be taken for errors in perception, for the subjectivity of giving evidence, etc. otherwise, the presence at the place of the event can be established not only on the basis of the circumstances related to the time of the commission but also for the previous period, namely that which preceded the commission of the crime.

7. Possession and distribution of the objects of the criminal offense as an index

If, in the case of undertaking the relevant measures and activities, an object known or assumed to have been obtained by committing a criminal offense was found on the person, then it represents a significant indication of the connection between the possessor of the object and the committed criminal offense. In such a case, it must first be proven from which criminal offense those objects derive, and then also the circumstances in which that object came into the possession of the person in whom it was found (by unauthorized production, by illegal taking, surreptitiously, by concealment, taking for meremet, by receiving as a gift).

8. Unfounded enrichment and irrational spending of money as an index

Quick enrichment and excessive spending of money can serve as a basis for the assumption of criminal activity of the person if he does not have or did not have a good, permanent or temporary income or legal source. The very nature of this index points to the specific person as the perpetrator of the criminal offense from the group of offenses with which illegal financial gain is obtained and if there are other indicators that point to the same person, then we can talk about the specific criminal offense. Most often, these are criminal offenses in the field of property crime, but it can also be other criminal offenses by committing which a financial benefit is obtained, such as various forms of forgery, illegal trade, taking bribes, criminal offenses against life and physical integrity, espionage, etc.

9. Showing the will to commit the criminal offense as an index

This index can be manifested with a series of behaviors that first of all represent the consequence of the anxiety and nervousness caused after the decision to commit the criminal offense as well as the efforts of the future perpetrator to create optimal conditions for making the decision to choose the object attacked, the place and the time when the crime will be committed, the necessary tools that will be used in that case, the commitment of the participants if they are necessary, as well as the measures to prevent its discovery, namely the deprivation of liberty. This index can appear with the preparation for the commission or the planning of the crime (surveying the object, photographing the object, with sketches and drawings of the object that is intended to be attacked, following the victim, collecting information from the means of information, obtaining the means of execution such as tools, masks, means of transport and connections, for physical exercises, with the aim of increasing strength and achieving conditioning, changing appearance, etc.); with the preparation of alibi; with the supply of false documents (especially when it is said: half of the money immediately and the other half after the work is done); with information about the persons who will be able to secure the shelter, or the hiding of the objects which were used for the commission of the crime; of interest to potential buyers, verbal or real threat that a criminal offense will be committed (here, care must be taken for the various possibilities of misuse to which the perpetrator may be charged, e.g. to use the vehicle of the person who is threatened, leaves his object at the place of the crime, commits the crime in such a way that the pretended motive for the crime indicates the person who was threatened, etc.); with various forms of suspicious behavior (eg carrying false documents, wandering aimlessly). The mentioned ways of showing the will to commit the criminal offense if it is understood before the criminal offense takes place, then they are treated as warning signs (these are revealed in the criminalistic information activity), while after their realization they point to the possible perpetrator.

10. Professional knowledge and skills as an index

In some cases, the method of execution, traces and other circumstances in which the criminal offense was committed can indicate the profession, habits and skills possessed by the perpetrator. So e.g. the way in which the corpse was dismembered can indicate the profession of the perpetrator - surgeon, pathologist, butcher; the quantitative forgery of the artistic work shows that the perpetrator is educated or a talented artist of a certain profile; burglary and stealthy entry into the apartment on the upper floors shows the extraordinary dexterity of the perpetrator; the way of tying the knots shows the profession or skill of the sailor, mountaineer; etc. During the commission of the criminal offense, the perpetrator can also show interference in the use of weapons, knowledge of combat skills, etc.

11. Recognition of certain circumstances and the situation as an index

The existence of the index that the perpetrator knew and took advantage of the circumstances, which not everyone knows, can be proven based on the choice of the object attacked, the time, place, method and means of execution. This index is especially important in cases where the circumstances were used which are known only to a certain number of people whose identity is known. For example, if it is proven that during the theft from the building with many rooms, only one of them was broken so that circulation was not carried out or it was faked, but only the table in the drawer of which the valuable items were (documentation, money, gold) was opened) it can really be assumed that the leader, instigator, helper, or co-leader is a person to whom the organization of buildings and objects are known earlier.

12. Motive as an index

Every criminal offense, unless it is a question of unintentional offenses, is committed for any motive

The motives of criminal offenses can be different such as profit, revenge, jealousy, etc. "Motive is an internal instinct that drives a person to do something or behave in a certain way. In essence, the cause, reason and incentive is what drives or causes the specific behavior. In the legal dispute, the motive explains why the delinquent violated the law, e.g. rape, murder or arson. Although the motive is different from the affect, it is not a necessary element when the criminal offense is in question, it can help a lot. For example, the motive often plays the key role in determining the causes of the fire, along with the identity of the person who is responsible for that act". (David R. Redsicker, John J. Connor, 2000-11). However, in practice, there is often the mistaken opinion that the motive for committing a criminal offense with the use of explosives is always the same and the only one, that is, many think that it is about terrorism, because more often these crimes are committed with explosives. It is a fact that they are most often carried out that way, but it is not always the only one. When explosives are in question, in many cases the motive can be sought and found in the way the crime was committed, in the behavior of the perpetrator at the scene, in the traces and objects of the criminal offense or even elsewhere, based on which with the logical reconstruction ideor can be extracted the most likely version of the circumstances in which the crime was committed and eventually who committed it⁴.

Needs, interest, habits, beliefs, traditions, instincts, desires, desires and feelings lead to the motive for the criminal act. By means of the motive, the existence of premeditation is determined, that is, premeditation is separated from inadvertence or will and unwillingness. Premeditated acts are actions with a conscious motive. The motive is one of the most important elements in the psychological evaluation of the will. In unintentional criminal offenses, the motive has to do with the consequences of the offense, while in premeditated offenses, both the offense and its consequences. The motive of the criminal offense is incentive and instinct as an internal category and trigger, rather than reason as an external category, which belongs to the character, instinct, feeling, understanding of people, society and the whole personality. Due to the action of the corresponding incentive, the reason in the personality of the perpetrator, he sets the specific goal that he wants to achieve by committing the criminal offense⁵.

The struggle of motive often precedes the act of will to commit the criminal offense and ends with the decision to commit the criminal offense. For motive, in addition to the social environment, the whole personality of the perpetrator is always meritorious as a unique concept. A crime is rarely caused by a single motive. In most cases, a "bunch of motives" acts. There is no whole table of motives. Inciting and accelerating motives, primary and secondary motives, altruistic and selfish motives, social and antisocial motives, honest and dishonest motives are known. In criminal practice, the general cause is often confused with the special motive for committing the criminal offense. The most frequent in practice are economic motives, hatred and revenge, political motive, erotic sexual motive, religious motive, fanaticism, the motive of the need to hide any secret, fear of punishment, love, solidarity, pity and other noble motives, wrongdoing and spirituality, superstition, etc. A separate group consists of pathological motives and the motives of the mentally ill. The possible motive of the known and unknown perpetrator of the criminal offense is predicted based on the results of the sighting and their own actions. Many versions of the possible motive must be formed and verified. The proven motive is often the basis for the argumentation of guilt.

⁴ Krec D.Krecfild 1980, 273.

⁵ Modlyu D, 1998, 63.

In the search for the motive of the criminal offense, criminalists move from the consequences of the criminal offense to the past, and this means, among other things, towards the motive. The type of criminal offense, the choice of the object attacked, the time of committing the crime, the place of commission, the means of commission, the method of commission, the action of its type and the secondary action of the criminal offense as well as other various variable circumstances are taken into consideration. When it is committed the criminal offense does not always have to match the consequences. With the analysis of each isolated fact as an inseparable part of the consequence, any important characteristic is revealed, which leads criminalistics to motive i. After the analysis, the synthesis is carried out, the acquired elements are combined and analyzed to see if they complement each other, or maybe they cannot match. The elements of the consequence on the basis of which the motive is proven are: the type of criminal offense, the choice of the object attacked, the method of execution, the type of action and the occasional one as well as other changing circumstances that depend on each specific case. After the formation of the versions for the motive, the possibility of any motive should be analyzed in relation to the ascertained factual situation. During the analysis, it should be borne in mind that anything that is not explained psychologically in an understandable and acceptable way can be pathological. Whenever, despite great efforts, a reasonable and acceptable motive cannot be found, it should be assumed that the act was committed by a mentally ill person. or psychopathy, or in an overly anxious state, in a poisoned state, in a drunken state, under the influence of hypnosis, sleep, pathological lust, etc. The discovery of the motive is facilitated by the discovery of the perpetrator, especially in the case of an individualized motive which can be attributed to one person or a small group. For the existence of the motive in some persons, I can also show the following circumstances: the character of the person, the manifestation of the will to commit the act, the manner of committing the act, NOT, recognition or non-recognition of the circumstances, the existence of a reason, that the person benefits from the act, the indices technical difference, effect and secondary effect of the crime, behavior and action of the suspect after the crime, etc. (Modly. D, Korajlic. N. 2002/334-335). However, Aleksic. ZH, and Milovanovic.Z, (1993/ pg.157), draw attention to the fact that when determining the motive and further action related to it, great care is always needed, because there is always the possibility that the internal incentive has pushed the perpetrator to commit the crime, it resulted from fraud or mistake, or camouflage is in question, therefore the perpetrator intentionally produces certain traces, or the crime committed in a certain way and under certain circumstances, wishing to present the motive different from the one they would ask for the prosecuting authorities, and in order to push the prosecuting authorities on the wrong path and to make sure that the suspicion does not fall on him. For the criminologist, the motive is a central issue in the criminal investigation, because it is presented in the role of the detective. Because, based on the available facts, the criminalist will also form the version about the motive on the basis of which he narrows the circle of possible perpetrators, therefore one of the nine golden questions is also this "why" and it has its own true meaning, because this question is excluded for the reason.

Conclisions

The various operative actions in the phase of detection of perpetrators of criminal offenses and their detection are conditioned by different criminal events. Even the events which do not present a problem for criminalistics require certain operational actions. Regardless of the fact that at once it is possible to plan specific measures and actions as well as certain versions in relation to the final development, some differences point to the need to treat each specific case differently. Even with the implementation of the same operational tactical measure, the

specifics of the case will affect the specifics of its conclusion. All these actions that are manifested by the undertaking of operational tactical and technical measures and activities and that are included in the association of persons and criminal events constitute the essence of criminal processing.

References

- [1]. Aleksić Ž., 1982, Kriminalistika, Beograd
- [2]. Aleksić Ž., 1988., Praktikum iz kriminalistike, Naučna knjiga, Beograd.
- [3]. Basarić M., Vežzagić N., 1998, Kriminalistika II, Fakultet kriminalističkih nauka, Sarajevo.
- [4]. Basarić M., Vežzagić N., 2004, Istraživanje požara, paljevina i eksplozija, Priručnik za istražitelje, Rukopis za knjigu, Sarajevo.
- [5]. Halilović H.; 2003, Prikriveni istražitelj-kriminalistički i pravni pristup, Magistarski rad, Fakultet kriminalističkih nauka, Sarajevo.
- [6]. Jovanović K., 1966, Osnovi kriminalistike, Niš.
- [7]. Jekić Z., 2001, Krivično procesno pravo, Beograd.
- [8]. Grubač M., 2002, Krivično procesno pravo, Uvod i opšti dio, Beograd.