

## Поняття та система засобів криміналістичної тактики: деякі проблеми вдосконалення

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### **Ключові слова:**

*криміналістична тактика, засоби криміналістичної тактики, інновації в криміналістичній тактиці, межі застосування криміналістичної тактики, нові засоби криміналістичної тактики.*

Стаття присвячена дослідженню актуальних проблем засобів криміналістичної тактики, їхнього поняття й системи. Аналізуються сучасні тенденції й наукові підходи в криміналістиці, присвячені дослідженню засобів криміналістичної тактики. Розглядається сучасне розуміння поняття засобів криміналістичної тактики, запропоновано його визначення з урахуванням традиційних й інноваційних підходів у криміналістичній науці. Зазначається, що поняття «засоби криміналістичної тактики», яке застосовується сьогодні в криміналістиці, має збиральний й узагальнювальний характер, відображаючи комплексність і багатофункціональність розроблення й використання засобів досягнення цілей розслідування й судового розгляду. Визначено основні інноваційні напрями досліджень і проблеми використання засобів криміналістичної тактики в правозастосовній діяльності, які забезпечують її ефективність і результативність.

Обґрунтовується, що одним із найбільш важливих завдань подальшого розвитку криміналістики є вдосконалення чинної системи засобів криміналістичної тактики з огляду на появу, розвиток і сучасний стан окремих інноваційних напрямів цієї галузі криміналістики й розширення меж застосування засобів криміналістичної тактики в різних видах юридичних практик (слідчої, судової, прокурорської, адвокатської, розшукової, детективної та інших). Застосування засобів криміналістичної тактики має охоплювати всі види діяльності, що враховує тенденцію інтеграції наукових знань, застосування й запровадження міждисциплінарних наукових розробок і їхнє подальше активне використання в юридичній практиці. Зазначається, що подальших розроблень потребують проблеми дослідження традиційних і нових засобів криміналістичної тактики, як-от: тактичний прийом, тактична рекомендація, тактична комбінація, тактика слідчої (розшукової) дії, тактика негласної слідчої (розшукової) дії, тактика судової дії, тактика організації та проведення тактичних операцій тощо. Сформульовано систему засобів криміналістичної тактики, наукові підходи та пропозиції щодо вирішення досліджуваних проблем, визначено інноваційні напрями розвитку.

## The concept and system of means of criminalistic tactics: some problems of improvement

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**Key words:**

*criminalistic tactics, means of criminalistic tactics, innovations in criminalistic tactics, limits of application of criminalistic tactics, new means of criminalistic tactics.*

The article is devoted to the study of current problems means of criminalistic tactics, their concept and system. The modern tendencies and scientific approaches in criminalistics devoted to research of means of criminalistic tactics are analyzed. The modern understanding of the concept of means of criminalistic tactics is considered, its definition taking into account traditional and innovative approaches in criminalistic science is offered. It is noted that the concept of “means of criminalistic tactics”, which is used today in criminalistics, is collective and generalizing, reflecting the complexity and versatility of the development and use of means to achieve the objectives of investigation and trial. The main innovative directions of research and problems of use of means of criminalistic tactics in law enforcement activity which provide its efficiency and effectiveness are defined. The interrelation of means of criminalistic tactics with practice, modern achievements of science and technology, tendencies of development of criminalistics and other sciences is traced, their innovative character is noted. It's substantiated that one of the most important tasks of further development of criminalistics is to improve the existing system of criminalistic tactics in view of the emergence, development and current state of some innovative areas of criminalistics and expand the application of criminalistic tactics in various legal practices (investigative, judicial, prosecutorial, lawyer, search, detective, etc.). Research of new means of criminalistic tactics largely determines the innovative directions of modern criminalistic research in this field of knowledge. The use of criminalistic tactics should cover all types of activities, taking into account the trend of integration of scientific knowledge, application and implementation of interdisciplinary research and their further active use in legal practice. It is noted that further development requires the study of traditional and new means of criminalistic tactics such as: tactical admission; tactical recommendation; tactical combination; tactics of investigative (search) action; tactics of unspoken investigative (search) action; tactics of judicial action; tactics of organizing and conducting tactical operations, etc. Means of criminalistic tactics that are actually real used and potentially designed to achieve the objectives of criminal justice form a “tactical arsenal” of investigator, detective, prosecutor, operatives, lawyer, judge (court), which allows them to successfully solve tactical problems that arise at each stage criminal proceedings, taking into account the peculiarities of the event being investigated or considered in court, investigative and judicial situations, determinant factors influencing the choice and expediency of the use of certain types of tactical means or their system, etc. The system and main functions of criminalistic tactics, scientific approaches and proposals for solving the researched problems are formulated, innovative directions of development are determined.

**Formulation of the problem.** In modern realities, the priority areas of scientific research in criminalistics are innovations in criminalistic tactics, which require the need to really increase the role of practical direction of such scientific developments, intensify the creation and application

of effective means of criminalistic tactics in practice which should ultimately significantly strengthen its theoretical and methodological function [15]. Today the tendency of strengthening of practical orientation of criminalistic developments of innovative products, its pragmatic orientation on the decision

of important practical problems as criminalistics is a powerful source of effective changes, increase of quality and efficiency of practical activity, its optimization acquires special value. It's no coincidence that the "father of criminalistics", Austrian scientist and forensic investigator Hans Gross, as the constant goal of criminalistics called the "practical" goal of criminalistics as an applied science of the realities of criminal law, noting that criminalistics by nature begins only where established, in what way crimes are committed, how to investigate these ways and to reveal them, what were the motives for committing such, what tasks were set – neither criminal law nor process tells us all this, it is a subject of criminalistics [3, p. 8].

In this regard, the remark of R.S. Belkin' is appropriate, who emphasize that criminalistics dramatically increases its scientific potential and increases practical efficiency in the conditions of "information explosion" [2, p. 17, 68]. As we can see, increasing the practical value of research should primarily be aimed at creating appropriate scientific and methodological support for the development and use of effective and efficient tools of criminalistic tactics, intensification of activities to create innovative criminalistic products of tactical-criminalistic direction, their implementation and application in practice of law enforcement agencies, significantly optimizing such work. According to V. Yu. Shepitko, the effectiveness of the use of criminalistic tactics involves their improvement, implementation of new developments, scientific substantiation [17, p. 174].

Given the above, today the problems of studying trends in criminalistic tactics, its modern understanding and prospects for further research, development of innovative areas of development, activation of opportunities to create innovative products in this field of criminalistics, research on the concept of criminalistic tactics, its systems and a number other issues that are currently underdeveloped in criminalistics, unexplored and need in-depth analysis and coverage.

#### **Analysis of recent sources and publications.**

A significant contribution to the study of criminalistic tactics was made by well-known criminalistic scientists, who turned to the development and study of certain theoretical and methodological problems of criminalistic tactics: L. Yu. Arocker, O. Ya. Baev, V. P. Bakhin, R. S. Belkin, T. V. Varfolomeeva, A. F. Volobuev, V. G. Goncharenko, A. V. Dulov, V. A. Zhuravel, A. V. Ishchenko, V. I. Komissarov, V. O. Konovalova, V. G. Lukashevich, E. D. Lukyanchikov, M. V. Saltevsky, V. V. Tishchenko, Yu. V. Chornous, V. Yu. Shepitko, B. V. Shchur and others. Some attention was paid directly to the study of criminalistic problems of criminalistic tactics (V. P. Bakhin, M. V. Saltevsky, V. V. Tishchenko, V. Yu. Shepitko, etc.). At the same time, the definition

of the concept of criminalistic tactics, consideration of their system and role in the fight against crime in the modern conditions of the adversarial process today remain insufficiently covered and require scientific justification. The relevance of the research topic is determined by the need to analyze modern trends and scientific approaches to modern understanding of the concept of criminalistic tactics, taking into account traditional and innovative approaches in criminalistic science.

**The purpose of the article** is to analyze and explore some controversial issues of the concept of "criminalistic tactics", to identify traditional and innovative approaches to their understanding and formation of a system of such tools, to outline promising areas for further research on this issue. The current state of development of criminalistic tactics determines the need for researched and elucidated roles and functional purpose of criminalistic tactics, their innovative nature.

**Presenting main material.** The current stage of development and formation of criminalistic tactics is characterized by the development of its theoretical and methodological foundations. Today, the subject of purposeful and in-depth study is the activity of the investigator and other subjects of criminal proceedings in the modern conditions of the adversarial process and counteraction to the performance of each of them of its procedural function. For such real conditions and needs of practice the corresponding tactical means of work of the investigator, the detective, the lawyer, the prosecutor, the judge (court) and other participants of process which make "tactical arsenal" of their activity are developed. As rightly noted by I. I. Kohutysh systematic, in-depth study of tactics as an activity aimed at preventing and overcoming opposition in the procedural investigation of crimes, provide an opportunity to solve important problems of criminal justice through the use of effective *means of criminalistic tactics*. The solution of these problems is devoted to the study of the theory of investigative situations, as well as promising work in the field of tactical operations, which are considered as a set of investigative actions, tactic admission and operational measures aimed at achieving a certain local task of crime investigation (for example, tactical operations "hot arrest", "alibi check", "check of testimony of a person who has pleaded guilty to a crime", etc.) [6, p. 388–389].

At the same time, the study and analysis of the literature, criminalistic practice, reveals a number of significant problems in the use of criminalistic tactics by practitioners, which in most cases is not the result of adequate criminalistic support of such activities, and often associated with low training, and in many cases with the lack

of the necessary knowledge, skills and practical abilities to use such tools. It seems that there are many debatable and unresolved item in the study of this issue that need special study and resolution.

Besides, the need to create a system of criminalistic tactics, defining the role and functional purpose of each of them and their comprehensive implementation is also relevant today, that is to say there is a need to intensify the development of organizational and tactical principles of tactical combinations and tactical operations. In this regard, S. Yu. Yakushyn rightly noted that in modern practice, the existing tactical means are not enough today, which requires the development of new and improvement of existing tactical and criminalistic tools. At the same time, it is important to provide another important condition for their effective application in practice, in particular, it is necessary that entities that have the right and opportunity to use them must have the necessary knowledge and practical skills to apply them and be able to skillfully operate with such means [21, p. 204–205], this in turn requires further research and implementation.

One of the urgent tasks of theoretical development of the use of tactical tools is to solve the problem of the conceptual apparatus. After all, at the beginning of any scientific research it is necessary to determine the meaning, place and relationship of the studied phenomenon (category), to understand the general theoretical provisions, to formulate the initial concepts and only then directly proceed to the scientific development of the problem. Ignoring this rule leads only to confusion, and sometimes forces to “reject” already existing experience of theoretical and applied researches and to begin consideration of these or those questions literally from the beginning, from the first principles [1, p. 3]. In this aspect, clearly, significant scientific and practical interest is in-depth study of the concept of “criminalistic tactics”, its modern understanding, structure and system, the ratio of “particles” and components that combine in it, their impact on each other, their role and appointments, etc.

Various terms are used to denote tactical means in the special literature and practice of criminal proceedings. They are often called “tactical and criminalistic tools” (O. O. Exkharhopoulo, O. S. Knyazkov), “tactical means” (S. Yu. Yakushin), “organizational and tactical means” (V. Yu. Shepitko, V. A. Zhuravel), “criminalistic tools” (V. A. Zhuravel), “tactical means of investigation” (V. V. Tishchenko, I. K. Hryshko), “means of criminalistic tactics” (A. V. Dulov, V. O. Konovalova, M. V. Saltevsky, V. Yu. Shepitko, etc.), etc. It’s seen that in most cases there are different approaches to the interpretation of the concepts under consideration, some discussions about their essence and content. In this regard, O. Yu. Golovin notes that, unfortunately,

there is no unambiguous understanding of the essence of the tactical means under consideration so far, just as there is no single direction of their systematization [4, p. 215].

In criminalistic sources, the concepts of means of criminalistic tactics, tactical-criminalistic means, organizational-tactical means are defined differently. So, I. I. Kohutych notes that the means of criminalistic tactics are tools with which the person in charge of the case solves the tactical tasks of investigating crimes or resolving the case in court, ie it is a procedural, non-procedural and organizational tool of its activities [5, p. 297]. O. S. Knyazkov defines “tactical and criminalistic tools” as scientifically constructed, exploratory and cognitive models that reflect the patterns of crime and activities for its detection and investigation, which include: the investigative situation; criminalistic description of the crime; investigative version; tactical task; tactical decision; planning [3, p. 9–14]. V. Yu. Shepitko and V. A. Zhuravel uses the term “organizational and tactical means”, by which scientists understand the optimal set of interrelated actions (investigative, operational and investigative, organizational) and tactic admission, which in their integrated application are aimed at ensuring the most effective solution of tactical (local, intermediate) tasks that arise in certain investigative situations [18, p. 188].

Thus, as we see, the study and analysis of criminalistic literature indicates the existence of different scientific approaches to understanding the means of criminalistic tactics. The concept of “criminalistic tactics”, which is used in the literature, is a collective nature, reflecting the complexity and versatility of the development and use of means to achieve the objectives of investigation and trial. This concept denotes any means, actions, measures, regardless of whether they have an intellectual-subject or intellectual-activity essence, whether they are considered as ways of behavior of the subjects of criminal proceedings of the investigator) and what is the mechanism of their influence, etc. [13, p. 59–68]. It should be noted that such a broad understanding of the content of means of criminal investigation does not contradict the semantic meaning of the word “means”, which is often used as synonyms for the words “reception”, “method of action”, “method”, etc., which is often leads to different understandings and interpretations of criminalistic tactics, their use in different meanings. Therefore, the concept of “means of criminalistic tactics” is complex and multifunctional, it has a collective nature and in essence is an optimal set of interrelated actions and techniques that are aimed at effectively solving tactical (local, intermediate) problems that arise in certain investigative situations.

In our opinion, *the means of criminalistic tactics* – is the optimal set of interrelated actions and techniques of tactical and criminalistic direction, which are embodied in tactics, tactical recommendations, tactics of procedural and non-procedural actions, tactical combinations and operations used by the investigator, detective, prosecutor, operative, lawyer, judge (court) in their activities and aimed at ensuring the most effective solution of tactical (intermediate) tasks that arise in certain investigative situations, in order to improve the quality and effectiveness of criminal proceedings and its optimization.

An important area of improving the provisions of criminalistic tactics is the development of a system of criminalistic tactics. As noted by V. Yu. Shepitko, the systemic nature of criminalistic tactics can be traced in its natural connections, the interdependence of certain structural elements – tactic admission, combinations (systems) or tactical operations, the mechanism of their implementation. Today in criminalistic tactics there are a lot of controversial provisions and concepts, there are pseudo-theories, speculative constructions are offered [19, p. 3, 5]. Investigating these issues, V. Yu. Shepitko and V. A. Zhuravel correctly emphasizes that the system of tactical means should be understood as a set of tactical means (techniques, recommendations) in their various combinations, which already include the tactics of investigative action and aimed at solving various problems in situations that arise [18, p. 187]. Therefore, the definition of the main areas of improvement of criminalistic tactics should be based on ideas about the system of criminalistic tactics, in which various tools are designed to reflect the content of its subject and meet the needs of law enforcement practice in combating crime and justice, optimize their application.

In the criminalistic literature there are different approaches to defining the system of criminalistic tactics. So, V. S. Kuzmichev and G. I. Prokopenko propose to consider the following components in the system of criminalistic tactics: a) procedural (investigative actions, operational and investigative measures, selection of explanations, requesting documents, appointment of departmental audit); b) non-procedural (tactical admission, tactical decision, tactical combination and tactical operation) [10, p. 184]. As you can see, this approach is debatable and needs further justification. In our opinion, first of all, the erroneousness of such a division is that these scholars proposed for consideration non-procedural means of criminalistic tactics do not cover the entire system of possible tactical means, leaving out the tactical recommendation; and a system of tactics aimed at solving individual tactical tasks within a single procedural action (investigative, judicial, unspoken investigative

(search) action, etc.) – a tactical combination; and a system of procedural and non-procedural actions and measures aimed at solving certain tactical tasks in criminal proceedings, taking into account the stages of investigation and trial, the investigative (judicial) situation – the tactical operation, etc.

In addition, as we see, this approach raises some objections to the inclusion of these scientists procedural actions, as they indicate “investigative actions, operational and investigative measures, selection of explanations, requesting documents, appointment of departmental audit) investigative (search) actions” and tactical and criminalistic tools in general. It is obvious that all such means available in criminalistics and in practice (tactic admission, tactical recommendations, tactical combinations, tactical operations, etc. are realized within the limits of carrying out procedural actions (investigative, judicial, unspoken investigative (search) action, etc.). Moreover, the procedural actions themselves cannot be considered as a means of criminalistic tactics, because here we can only talk about the tactics of their realization and implementation, which is a kind of means of criminalistic tactics.

Some scholars suggest considering as “tactical means of criminalistic tactics” such “tools” that are not always unfounded, and sometimes even contradict the modern understanding of criminalistic tactics. So, J. W. Udovenko claims that recently criminalistic tactics have been supplemented by such new tactical means as “tactical operation”, “tactical combination”, “tactical decision”, “investigative situation”, “psychological ambush”, “investigative cunning”, etc., which enrich the language and the content of criminalistic tactics as a branch of criminalistic knowledge [12, p. 133]. In our opinion, the scientist's attribution to new tactical means, as the author argues, “psychological ambush” and “investigative cunning” is unfounded and contrary to the modern understanding of criminalistic tactics, so to distinguish them in the system of criminalistic tactics is impractical and erroneous. In addition, as noted by I. I. Kohutych, research in the field of criminalistic tactics is also characterized by the attention of scientists to the development of “non-traditional methods of investigation”: the possibility of using in the investigation of the theory and practice of biorhythmology, hypnology, polygraph, etc. [6, p. 339]. In our opinion, such proposals are quite debatable and testify to their problematic and inadmissible application in the theory and practice of crime investigation, including biorhythmology and hypnology, noting the unscientific and unfounded use of such “pseudo-tools” in the practice of pre-trial investigation and trial.

In our opinion, the research of this problem by V. Yu. Shepitko deserves attention [19], which to

the means of criminalistic tactics includes: a) tactical reception as a way of carrying out procedural action, aimed at achieving its goal; b) tactical recommendation – scientifically substantiated and tested advice on the choice and application of tools, techniques and forms of behavior; c) systems (subsystem) of tactics – an ordered set of interconnected and interdependent techniques that have a target orientation in the process of its implementation (the system of tactics is called a tactical combination); d) tactics of investigative (judicial, operational-search) action, covering the entire typical tactical complex of its possible implementation, realization; e) a system of investigative or other actions (tactical operation) aimed at performing the task of investigation in the relevant investigative situation [7, p. 133].

In the process of questioning and interviewing investigators from the Prosecutor's Office, the Ministry of Internal Affairs and the Security Service of Ukraine, we found out: what means of criminalistic tactics are most often used in practice. The results are as follows: tactical reception – 86%; tactical recommendation – 61.4%; systems (subsystem) of tactics (tactical combination) – 64%; tactics of investigative (judicial, operational and investigative) action – 93.4%; e) system of investigative or other actions (tactical operation) – 56.6% [14, p. 191]. The obtained data allow us to conclude that practitioners among the means of criminalistic tactics most often use the tactics of investigative (judicial) action.

In this regard, a certain scientific interest is the point of view of scientists who emphasize that a certain foundation, “part” on which criminalistic tactics are based is the tactics of investigative (judicial, operational and investigative) action, covering the entire typical tactical complex of its possible implementation, realization [7, p. 133]. Therefore, it is important to identify and study such tactical tools as tactics of investigative (search), unspoken investigative (search), judicial action, operational-investigative, security measures, which can be used both individually and in combination, aimed at optimizing and streamlining criminal proceedings.

It should be noted that in the special literature it has been repeatedly pointed out that single investigative actions and certain tactics are ineffective in all cases. As a rule, they achieve the goal only when they are implemented in conjunction with other investigative actions and other measures, as well as in combination with other tactical receptions. Based on this, the very statement of the problem of the integrated use of criminalistic tactics is correct and timely. Such conclusions are confirmed by the results of our survey and interviews with investigators of the Prosecutor's Office, the Ministry of Internal Affairs and the Security Service of Ukraine on their opinion on how investigative (search), unspoken investigative (search)

actions and operational-investigative, organizational-technical and other measures, in particular, 68.85% of respondents indicated the complex nature of their implementation, 28.28% said that they are conducted in isolation, 2.85% – other [16, p. 62]. Therefore, in modern conditions of updating the criminal procedural legislation, reforming the criminal justice, the study of the problems of integrated use of tactical means is relevant and conditioned by the needs of criminalistic practice.

In view of the above, the system of means of criminalistic tactics includes: 1) *tactical reception* as a way of carrying out procedural action aimed at achieving its goal; 2) *tactical recommendation* – scientifically substantiated and tested in practice advice on the choice and application of tools, techniques and forms of behavior; 3) *tactical decision* – the choice of the purpose of tactical influence on the criminalistic situation as a whole or its individual components, the course and results of the process of investigation and trial and its elements and the definition of methods, techniques and means to achieve this goal; 4) *tactical combination* as a system (subsystem) of tactical techniques, an ordered set of interconnected and interdependent techniques that have a target orientation in the process of its implementation; 5) *tactical operation* as a system of procedural and non-procedural actions (measures), which is aimed at solving a separate (intermediate) tactical task of the investigation in the relevant investigative or judicial situation; 6) tactics of investigative (search) action, covering the entire typical tactical complex of its possible implementation, realization; 7) tactics of unspoken investigative (search) action; 8) *tactics of judicial action*; 9) *tactics of interaction*.

In the system of criminalistic tactics, in our opinion, it is necessary to highlight the *tactics of interaction*, which is the activity of the investigator to establish communication and coordinated measures to address the tactical tasks of the investigation with officials of judicial, law enforcement and other government agencies, individual citizens. Such a process of interaction is also carried out between the investigator and other participants in the criminal proceedings: the victim and his legal representative, the suspect, his representative and defense counsel, witness, specialist and expert. Interaction can be constructive if the procedural, professional and personal interests of its participants coincide. At the same time, such interaction may have a conflicting nature, if its participants have opposite, significantly different procedural and personal interests and tasks. There is also a mixed type of interaction in conditions where the interests of the participants coincide in part. Depending on the conditions of interaction, the investigator (detective) chooses the most appropriate tactics for

establishing cooperation, to eliminate the causes of the conflict and effectively establish the essence of the criminally relevant event and its circumstances [8, p. 246]. Varieties of tactical form are: a) joint study and analysis of materials of operational development or verification; b) joint development of versions and coordinated planning of ISA, operational-search and preventive measures; c) regular exchange of information on the circumstances of specific criminal proceedings; d) organizations of investigative and operational groups, which include investigators and employees of operational units, etc. [7; 8; 10; 11].

Thus, the interaction of the investigator with the operational units and other entities in criminal proceedings is a system of joint functioning, which is aimed at solving the tactical tasks of pre-trial investigation and trial and its purpose – to establish the objective truth. Based on this, all the tactical tools of the subjects of the use of criminalistic tactics, including tactics of interaction, it is natural and determines the behavior of the investigator (detective) and other subjects of interaction during the investigation and trial. Therefore, the separation of such a new direction as the tactics of interaction in the system of criminalistic tactics is logical.

**Conclusions.** One of the defining trends in the development of criminalistic science in today's conditions is the development and formation of an effective and efficient system of tools, methods and technologies to combat the challenges of modern crime. Such a process requires intensification of the formation and implementation

of tactical capabilities and tools aimed at improving the efficiency and effectiveness of activities for the investigation and prevention of crimes, which is in the field of criminalistic science [20]. In this regard, an important task for the further development of criminalistics is to improve the concept and system of criminalistic tactics in view of the emergence, development and current state of certain innovative areas of this branch of criminalistics. At the same time, it should be noted that today in criminalistics the problem of modern understanding of the means and system of criminalistic tactics is debatable and insufficiently developed.

Thus, in modern realities, a comprehensive approach to the study of the problems of the use of criminalistic tactics in various activities, both law enforcement and criminal, is quite relevant. Obviously, it is a question of application of system-structural, activity, technological and other approaches to studying of prospects and possibilities of expansion of limits of application of criminalistic knowledge and means of criminalistic tactics in modern conditions. At the same time, it is not necessary to limit oneself to the field of pre-trial investigation, as traditionally in many criminalistic sources this issue is considered, which, in our opinion, is incorrect, and today needs clarification, revision of such approaches and further research on this issue. As can be seen, these problematic issues often largely determine the promising innovative areas of criminalistic research in this area of knowledge.

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