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Некоторые криминалистические аспекты назначения фоноскопической экспертизы при раскрытии и расследовании незаконного участия в предпринимательской деятельности

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Аннотация

Сложность расследования незаконного участия в предпринимательской деятельности обуславливается дефицитом доказательственной информации на первоначальном этапе расследования. Основным поводом для возбуждения уголовного дела по ст. 289 УК РФ служат результаты проведения оперативно-розыскных мероприятий. В рамках проведения оперативно-розыскных мероприятий выполняются оперативно-технические мероприятия и происходит фиксация криминалистически значимой информации на файлы аудиозаписи (фонограмма). Для придания содержанию файла доказательственного значения необходимо приобщить его к материалам уголовного дела в качестве вещественного доказательства. Отмечается, что при назначении многообъектной экспертизы, где необходимо идентифицировать двух и более лиц (должностного лица и подконтрольного лица, должностного лица и работника подконтрольной организации) следователю необходимо выносить отдельное постановление на каждое лицо. Представленные автором рекомендации в раскрытии и расследовании незаконного участия в предпринимательской деятельности позволят избежать возможных ошибок при назначении фоноскопической экспертизы.

Ключевые слова: фоноскопическая экспертиза, комплексная экспертиза, многообъектная экспертиза, должностное лицо, льготы, преимущества, покровительство, аудиозапись, фонограмма.

Some forensic aspects of the appointment of a phonoscopic examination in the disclosure and investigation of illegal participation in business

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Abstract

The complexity of the investigation of illegal participation in entrepreneurial activity is caused by the lack of evidence at the initial stage of the investigation. The main reason for initiating a criminal case under art. 289 of the Criminal Code of the Russian Federation are the results of operational investigative measures. As part of the operational-search measures, operational-technical measures are carried out and forensic information is recorded on audio recording files (phonogram). In order to give evidence to the contents of the file, it is necessary to attach it to the materials of the criminal case as evidence. It is noted that when assigning a multivariate examination where it is necessary to identify two or more persons (an official and a controlled person, an official and an employee of a controlled organization), the investigator must make a separate decision for each person. The recommendations presented by the author in the disclosure and investigation of illegal participation in entrepreneurial activity will avoid possible errors in the appointment of a phonoscopic examination.

Key words: phonoscopic examination, complex examination, multi-object examination, official, benefits, advantages, patronage, audio recording, phonogram.

The complexity of the investigation of illegal participation in entrepreneurial activity is caused by the lack of evidence at the initial stage of the investigation [1]. Note that the main reason for initiating a criminal case under art. 289 of the Criminal Code [2] are the results of operational-search measures "observation", "inspection of buildings, premises, structures, terrain and vehicles", "drying of telephone conversations", "operational experiment".

As part of the operational search activities, as a rule, operational technical activities are carried out and forensic information is recorded on audio recording files (phonogram). In order to give evidence to the contents of the file, it is necessary to attach it to the materials of the criminal case as evidence.

As E. A notes. Anufrieva, almost every criminal case initiated on the fact of committing a corruption crime is accompanied by the appointment of a phonoscopic examination [3]. At the same time, taking into account the circumstances of the criminal case, the length of the audio recording, the complexity of the research of the audio recording (the need to attract experts with knowledge in the field of technology and linguistics), and also in the absence of a unified methodology for conducting a phonoscopic examination, the investigator must evaluate the feasibility of conducting a phonoscopic examination.

Thus, the information received from the presented audio file may not directly incriminate the official of the institution or commercial organization in providing privileges, advantages or other protection to the legal entity controlled by it.

At the same time, to establish all the circumstances of the criminal case, the paramount importance must be given to the search and study of documents reflecting:

- competence of an official;
- creation and (or) management of a controlled organization, patronage of it;
- corporate, accounting, financial reporting of a controlled legal entity (including here include contracts with counterparties concluded during the period of control by the official).

In addition, in the future, the appointment of handwriting, financial and economic, forensic accounting, information and computer, technical and forensic examination of documents is necessary.

The presented phonogram may indicate the relationship between the official and the person under control of the organization, the resolution of

the organization's management issues, as well as other physical evidence, the detection of which must be given priority. In this regard, resorting to a phonoscopic examination should be in the case of:

1) the absence of other evidence indicating the involvement of an official in the management of a controlled organization;
2) doubts about the authenticity, reliability and relevance of the submitted audio recordings.

Thus, it is necessary to solve the identification problem (to establish the identity between the voice and the person's speech on the phonogram and the person's voice and speech sample presented for comparison) and the diagnostic problem (to establish the content of the phonogram).

For the correct resolution of the question of the appointment of an examination (including phonoscopic), one should know the level of development of science and technology, the modern possibilities of examination, the circle of persons and institutions to whom the study can be entrusted.

In addition, it is necessary to avoid typical errors in the appointment of forensic phonoscopic examination:

— incorrect formulation of questions submitted for expert permission;
— errors in obtaining samples for a comparative study;
— errors in determining the list of materials required by the expert for the study;
— errors in determining the original phonogram to be studied;
— poor-quality selection of phonograms.

As a rule, this examination will be multi-objective due to the need to identify two or more persons (an official and a controlled person, an official and an employee of a controlled organization), therefore, the investigator must issue a separate decision for each person [4].

Unfortunately, in recent years there has been a steady tendency towards a decrease in the quality of received samples of voice and speech, which negatively affects the effectiveness of the fight not only against illegal

participation in entrepreneurial activity, but also against general criminal and other crime in general.

It should be noted that upon receipt of speech and voice samples by the initiator of this investigative action (or operational search action), the rules for sampling are often not followed, which entails their unsuitability (limited unsuitability) for personal identification.

In our opinion, if it is not possible to get a high-quality sample of speech and voice for comparative research, you should use a phonogram with a verbal conversation record that is not related to the investigation of the case (for example, using the recording of telephone conversations of an official by official or personal phone). Moreover, one should use a record of negotiations between an official or a proxy with persons not involved in the criminal case, so that the latter can not only confirm the fact of the conversation itself, but also indicate with whom exactly this conversation took place.

In our opinion, the use of these recommendations in the disclosure and investigation of illegal participation in entrepreneurial activity will avoid possible errors in the appointment of a phonoscopic examination.

Список литературы

1. Моховая Т. А. К вопросу о судебных экспертизах, назначаемых при расследовании преступлений против безопасности дорожного движения // Теория и практика общественного развития. 2015. № 24. С. 258-261.

2. Уголовный кодекс Российской Федерации от 13.06.1996 N 63-ФЗ // Собрание законодательства Российской Федерации. 1996. № 25. Ст. 2954.

3. Ануфриева Е. А. Особенности методики предварительного расследования и судебного разбирательства по делам о коррупционных преступлениях, совершаемых сотрудниками ОВД: монография. Новосибирск: Изд-во НГТУ, 2014. 239 с.

4. Морозова Т. А. К вопросу о взаимодействии следователя с экспертом при назначении судебной фоноскопической экспертизы // Актуальные проблемы борьбы с преступлениями и иными правонарушениями. 2018. № 16-1. С. 137–138.

References

1. Mokhovaya T.A. On the issue of forensic examinations appointed in the investigation of crimes against road safety // Theory and practice of social development. 2015. No. 24. P. 258-261.

2. The Criminal Code of the Russian Federation of 13.06.1996 N 63-FZ // Collection of legislation of the Russian Federation. 1996. No. 25. Article 2954.

3. Anufrieva E. A. Features of the methodology for the preliminary investigation and trial of corruption offenses committed by police officers: a monograph. Novosibirsk: NSTU Publishing House, 2014.239 p.

4. Morozova T. A. To the question of the interaction of the investigator with the expert in the appointment of a forensic phonoscopic examination // Actual problems of the fight against crimes and other offenses. 2018. No. 16-1. P. 137–138.