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ISSUES OF THE THEORY OF CRIMINALISTICS SITUATIONS

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Abstract. *The word ‘situation’ is met quite often not only in everyday life but also in legal literature. It describes the interrelations among the society, officials, public administration entities, institutions, states, etc. Frequently it is a characterization of certain controversial phenomena. In criminal justice, however, this word carries a special practical and applied meaning and requires constant in-depth analysis not only of the etymology of ‘a situation’ but also of its legal theoretic meaning, purpose, function and practical application. In the present article, the authors examine the criminalistics situation—one of the most significant categories of the theory of criminalistics and crime investigation techniques. The article explores a number of concepts such as ‘a criminal situation’, ‘a criminalistics situation’, ‘a crime situation’ and ‘a crime investigation situation’ as well as their content, classification and interrelations. The investigation of criminal acts encounters criminal law, criminology*

gical and criminalistics situations. Yet, all of them are linked by the fact that they represent particular situations which can conditionally be called 'criminal situations'. After a proper analysis and classification of the situations of criminal acts, it is possible to determine the strategic and tactical characteristics of their investigation situations, forecast their course and a likely outcome.

Keywords: *criminal procedure, criminalistics, crime investigation, criminal situations of criminal acts, situations of criminal acts, investigation situations of criminal acts.*

Introduction

Crime and its consequences in a states' social, economic and legal fields are one of the most relevant problems both in our state and other countries. To this end, legal and scientific forces are assembled so that, accordingly, some of them would draft laws as instruments for combating this negative factor, others would conduct this combat and yet others would interpret and make various scientific recommendations on how to do this to achieve the most optimum outcome. The structure of crime is changing, criminal acts are committed in an increasingly thought-out and qualified manner, and modern techniques are used to commit them; therefore, a legislator attempting to at least slightly curb the forward movement of such processes carries out legal reforms, which also obliges scientists to repeatedly return to, explore and improve scientific recommendations on the detection and investigation of criminal acts, since scientific recommendations and tactical methods for performing certain actions are one of the initial measures which assist a practical worker in detecting and investigating criminal acts.

The emergence process of evidentiary or other criminalistics information, which is relevant to the investigation, concerning any criminal act before its beginning and during the course of the investigation is accompanied by emerging and changing actual situations of diverse complexity. The situations indicated influence the reflection, change and disappearance processes of criminal acts—traces and consequences, and the choice of measures, methods and techniques. We would generally call such situations criminalistics situations.

When investigating criminal acts, organizing and exercising crime control, a pre-trial investigator, prosecutor and a pre-trial investigation judge are linked to criminalistics situations.

There is a lack of thorough examination of criminalistics situations in legal literature. Other sciences—constitutional law ('legal situation'¹), administrative law ('simple

1 Sinkevičius, V. Lietuvos Respublikos seimo biudžetinė kompetencija konstitucinio teismo jurisprudencijoje [Budgetary Competence of the Seimas of the Republic of Lithuania in the Jurisprudence of the Constitutional Court]. *Jurisprudencija*. 2002, 31(23): 25–35.

situation of a civil case²), criminal law³ and criminal procedure law⁴, criminology⁵ (‘situational causes’ and ‘situational factors’), psychology (‘situation of insecurity’⁶) and operational activities⁷—analyze situations from their positions only. The analysis of criminalistics situations as a whole shows their separate aspects, qualities and meaning of the whole in a higher relief.

The aim of this article is to specify and substantiate the conception and classification of criminalistics situations and their response to the needs of criminalistics science.

Criminalistics situations have both a practical and a theoretical meaning: it is necessary to identify and adequately evaluate them and to carry out the investigation and prevention of criminal acts on their basis. Consequently, the relations before the commission of a crime, during the pre-trial investigation (of criminal acts between pre-trial investigation officers or prosecutors and other participants in the criminal procedure) and during proceedings are the subject of our study.

While writing the article, systematic analysis, logical-analytical and generalization methods were applied.

1. Conception of Situation

In philosophy, a situation is perceived as a position, a state of relations, in particular, the whole of reality relations which are faced by a person as an intellectual and active being and which not only set the limits of his/her freedom but also open certain opportunities.⁸ To carry out an in-depth analysis of the concept of situation, it is important to find out what the word ‘circumstances’ means. Dictionaries explain the concept of ‘circumstances’ as a condition affecting or determining a situation⁹ or as different phenomena, among which relations are mentioned.¹⁰

- 2 Šedbaras, S. Kai kurie administracinio proceso sampratos aspektai [Some Aspects of the Conception of Administrative Procedure]. *Jurisprudencija*. 2002, 31(23): 95–104.
- 3 Girdenis, T. Teštinės nusikalstamos veikos samprata ir požymiai [Conception and Elements of a Continuous Criminal Act]. *Jurisprudencija*. 2007, 8(98): 29–34; Pranka, D. Pasikėsimo padaryti nusikalstamą veiką problematika baudžiamosios teisės teorijos ir teismų praktikoje [Issues Concerning an Attempt to Commit a Criminal Act in the Theory of Criminal Law and Case-Law]. *Jurisprudencija*. 2008, 11(113): 34–41.
- 4 Zajančkauskienė, J. Baudžiamojo proceso, kuriame dalyvauja asmenys su negalia, ypatumai [Peculiarities of Criminal Procedures Involving Disabled People]. *Jurisprudencija*. 2010, 1(119): 331–349.
- 5 Kestenis, A. Narkomanija kaip visuomenės saugumo problema [Drug Addiction as a Problem of Public Security]. *Jurisprudencija*. 2002, 29(21): 109–116; Pocius, A. Šeimos ir mokyklos įtaka nuteistųjų iki gyvos galvos už nužudymus asmenų nusikalstamo elgesio formavimuisi [The Impact of Family and School on the Formation of Criminal Behaviour of Persons Sentenced to Life for Murders]. *Jurisprudencija*. 2007, 10(100): 52–59.
- 6 Vosyliūtė, A. Nesaugumo situacijos ir būsenos: jaunimo mintys [Situations and States of Insecurity: Thoughts of the Youth]. *Kriminalinė justicija: LPA mokslo darbai*. 1994, 3: 160–162.
- 7 Mulevičius, S. Rizikos valdymo galimybė atliekant operatyvinius veiksmus [Possibility of Risk Management in Performing Operational Actions]. *Jurisprudencija*. 2003, 49(41): 76–84.
- 8 Halder, A. *Filosofijos žodynas* [Dictionary of Philosophy]. Vilnius: Alma littera, 2002, p. 192.
- 9 *Dabartinės lietuvių kalbos žodynas* [Dictionary of Contemporary Lithuanian]. Vilnius: Mokslo ir enciklopedijų leidykla, 1993, p. 29.
- 10 Lopatin, V. V. *Malyj tolkovyj slovar russkogo jazyka* [Small Explanatory Dictionary of Russian]. Moskva: Russkij jazyk, 1990, p. 145.

A criminal himself/herself chooses a subject, place, time, instruments and method of an attempt. However, that choice is also considerably influenced by the environment in which a person lives and acts. The whole of actual circumstances among which certain causal, time, space and other relations exist objectively arises in any area of human activity. Arising circumstances form a particular system of elements, called 'a situation'.¹¹

At the beginning of the analysis of the conception of the criminalistics situation, it is necessary to find out the semantic meaning of the word 'situation'. A situation is understood as a position that has arisen, the whole of circumstances¹², the whole of conditions¹³ in which certain relations, environment and position emerge. Jurka, examining the preconditions for the emergence of a witness in criminal procedure and analyzing the comment in the Code of Criminal Procedure on the will of a person when he/she encounters a situation¹⁴ in which a crime is taking place, raises a question whether 'the relation of an actual situation to human will and perception create a potential as a degree of capacity to become a witness in a criminal case' and states that 'internal (subjective) criteria begin prevailing here'¹⁵. Yet, the author looks at the situation that arose during the crime. Such a situation has already been examined by scientists; in our research, we are going to focus on the conception of this situation.

A number of authors perceive a situation as a certain amount of information.¹⁶ Juszka singles out two situations in which versions cannot be created (or it is inexpedient to create them). The first situation is as follows: an officer who is conducting a pre-trial investigation possesses the minimum amount of information and cannot come up with a specific version to explain the essence of the incident. The second situation is the following: it is absolutely inexpedient to produce versions when the investigator is able to explain the essence of the incident by referring to preliminary data. In operational activities, the nature of information, rather than the essence of the situation, changes. Mulevičius writes: '[i]f while performing operational actions elements of obscurity and uncertainty in a tactical situation are encountered, and, after a receipt of new information, it is possible to form a more thorough opinion on the current tactical situation, one can state that the report contained information, and, on the contrary, if a new report received does not reduce the level of obscurity in a tactical situation'¹⁷. Ovčinskis links the clarity of a tactical situation to the amount of data on the object under investigation.¹⁸

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- 11 Volcheckaja, T. S. *Kriminalisticheskaja situologija* [Criminalistics Situology]. Kaliningrad: Kaliningradskij universitet, 1997, p. 49.
 - 12 Vaitkevičiūtė, V. *Tarptautinių žodžių žodynas* [Dictionary of International Words]. Vilnius: Leidykla „Žodynas“, 2007, p. 1012.
 - 13 *Slovar russkogo jazyka* [Dictionary of Russian]. Vol. 4. Moskva: Russkij jazyk, 1998, p. 100.
 - 14 *Lietuvos Respublikos baudžiamojo proceso komentaras. I-IV dalys* [Commentary to the Code of Criminal Procedure of the Republic of Lithuania. Parts I-IV]. Vilnius: Teisinės informacijos centras, 2003, p. 205.
 - 15 Jurka, R. Liudytojo sąvoka Lietuvos ir kitų užsienio valstybių baudžiamajame procese [The Concept of a Witness in Criminal Procedure of Lithuania and other Foreign States]. *Jurisprudencija*. 2004, 51(43): 110.
 - 16 Juszka, K. *Wersja kryminalistyczna* [Criminalistic Version]. Cracow: Kantor Wydawniczy Zakamycze, 1997, p. 95.
 - 17 Mulevičius, S. Rizikos valdymo galimybė atliekant operatyvinius veiksmus [Possibility of Risk Management in Performing Operational Actions]. *Jurisprudencija*. 2003, 49(41): 83.
 - 18 Ovchinskij, S. S. *Operativno-rozysknaja informacija: teoreticheskie osnovy informacionnogo – prognosticheskogo obespechenija operativno – rozysknoj i profilakticheskaj dejatelnosti organov vnutrennikh del po*

Some authors link a crime situation not only to information during the commission of a crime or pre-criminal information but also to the investigator's knowledge or a new procedural figure. As Latauskienė states, '[i]n order to identify the causes and motives of sexual crimes, an investigator must find out what place sex occupies in a suspect's life. Certain knowledge of sexopathology can help evaluate the very crime situation'.¹⁹ This view is confirmed by the statement of Burda: '[a] pre-trial investigation judge cannot take any actions on his/her initiative. When they are performed in a new investigation situation, a pre-trial investigation judge has to actively create tactics for carrying out pre-trial investigation actions'²⁰.

Every situation is specific, i.e. it exists within specific limits of time and space. Situations can be limited by a small space and last just for a few seconds (for example, a road traffic accident). They, however, can cover a large area and last for quite a long time (for example, military operations in Iraq). The situation itself is, of course, individual in every case. Identical situation recurrence is a practically impossible phenomenon. Even analogical situation recurrence, for instance, criminals who commit serial crimes (thefts, murders, arson attacks, etc.) will involve a different time factor. A person can out of habit choose the same method for committing a crime, the same instruments for committing a crime, etc.; however, the situation will be completely different in terms of time, surroundings or participants, etc.

2. Conception of Criminalistics Situations

Every criminal act, irrespective of where and when it was committed, what was the motive for committing it and what method was used to commit it, is reflected in specific traces, items, relations, processes, phenomena, events and surroundings. The concept of the situation of a criminal act cannot be defined by the description of place and time conditions only. The situation describes the occurrence of a criminal act far more broadly. It covers spatial–constructive, natural–climatic, physical–chemical, time, production–domestic and psychological factors of criminal behaviour.²¹ The above factors are observed differently in certain cases. In every case, environmental factors that determine the course and circumstances of a specific criminal incident are the most significant. Situations have very broad characteristics and we evaluate them according to time and other factors. Therefore, there are long-term situations, recurrent (cyclic), regular, controllable and uncontrollable ones. Detection of every crime is related to the analysis and assessment of a large number of situations.

borbe s organizovanoj prestupnostju [Operational-Investigative Information: Theoretical Foundations of Information-Forecasting Ensurance of Operational-Investigative and Preventive Activities of Internal Affairs Bodies Fighting Organized Crime]. Moskva: INFRA-M, 2000, p. 23.

19 Latauskienė, E., *et al.* *Kriminalistika kaip integralus mokslas: įrodinėjimas ir praktika* [Criminalistics as an Integral Science: Averment and Practice]. *Jurisprudencija*. 2003, 43(35): 106.

20 Burda, R. *Naujas Baudžiamojo proceso kodeksas–nauji kriminalistikos taktikos uždaviniai* [New Code of Criminal Procedure – New Tasks of Criminalistics Tactics]. *Jurisprudencija*. 2003, 43(35): 14.

21 Jablov, N. P. (ed.). *Kriminalistika* [Criminalistics]. Moskva: Jurist, 2007, p. 73–77.

Criminalistics situations disclose the very mechanism for committing a criminal act and interrelations of participants in a criminal act, criminals and officials. Consequently, we suggest calling the whole of different circumstances (relations) among participants in a criminal act (the victim and the criminal, accomplices, the investigator and the suspect, the investigator and the prosecutor, the prosecutor, the judge and the suspect and/or his/her defender, etc.) a criminalistics situation; the whole of different circumstances (relations) forms before the commission of a criminal act, during its commission, after the commission of a criminal act when it is being concealed or during the investigation of a criminal act and court hearing.

Consequently, the situation of a criminal act, the criminal act investigation situation and the proceedings situation are three different categories which comprise the system of criminalistics situations.

3. The Conception and Types of the Criminal Act Situation

Clarification of the criminalistic essence of the crime under investigation usually begins exactly with the perception and investigation of the situation in which it was committed. The elements of the criminalistic characteristics of criminal acts do not exist beyond the limits of specific surroundings and are observed exactly in them. In any case, they are under the influence of this situation which can have a substantial impact on the formation, development and sometimes transformation of separate criminalistic qualities of crimes. A certain environment defining the situation can facilitate or complicate the commission of a criminal act in a certain manner. The environment very often determines the adaptation of the method of a criminal act to one's particular circumstances. Moreover, the environment frequently has an essential impact on the mechanism for committing a criminal act.

A criminal act and the preparations for it take place in a particular environment the elements of which leave traces. Such traces contain criminalistically relevant information which indicates in what conditions a criminal act was prepared and committed, and which of environment conditions facilitated or complicated the commission of an act. The situation of a criminal act is reflected not only in material data, but also in the behaviour of the participants, their interrelations, etc. The situation of a criminal act does not coincide with the scene of the crime. The first conception is broader. It is important to perceive that crime investigation cannot concentrate on the scene of the crime only. It is necessary to analyze the entire crime situation in detail, otherwise this will make a negative impact on the investigation.

The situation of criminal acts is a variety of relations (in its widest sense) that forms within quite a long period of time (even before preparations, commission or concealment of a criminal act).

The situation of criminal acts committed by persons acting in space can be understood as relations among persons involved in a criminal act, relations between persons and the state, and relations during crime preparations, commission and concealment.

The investigation of criminal acts requires highlighting relations not only during the commission of criminal acts but also before and after commission.

Thus, we can state that the situation of criminal acts is a variety of relations among persons involved in criminal acts before, during and after the commission of a criminal act. This situation also includes the environment (circumstances and conditions) in which preparations, commission and concealment of a criminal act take place.

The above relations can highlight a criminal's voluntary causal relations with a criminal act and define a criminal's guilt, its forms, motives behind criminal acts, direct causes, etc. In this context, there are no contradictions among criminal law, criminological and the criminalistics situation. These are different attitudes towards one and the same phenomenon and each examines the situation from different perspectives.

The elements of a specific life situation faced by a criminal before the commission of a criminal act include external (objective) factors that influence the determination to commit a criminal act. A specific life situation is the whole of objective circumstances of a concrete person's life, which has an impact on his/her behaviour before the commission and concealment of a criminal act, and also during the commission of criminal actions.²² A specific life situation may include circumstances that help to commit a criminal act, circumstances that impede the commission of a criminal act or neutral circumstances.

In addition to material environment of the scene of the incident, the situation of a criminal act includes various circumstances (helping or impeding the actions of crime participants), chronological characteristics of an incident, psychological relations among participants in a criminal act, etc. In our opinion, the structure of the situation of a criminal act comprises the following groups of factors describing the situation:

- conditions of a criminal act (conditions of the seasons, meteorological conditions, time conditions and other conditions);
- environment (urban and other phenomena);
- factors determining a criminal act (production factors, material factors, behavioural factors, physical–chemical factors and other phenomena of objective reality).

Attempts have been made to classify situations of criminal acts according to various criteria; however, there has been no unanimous opinion so far. This is where the major problem exists, since the basics by which situations are grouped are dynamically changing; consequently, one and the same situation can move from one classification group to another at different moments.

Basically there are an enormous number of bases for the classification of the situations of criminal acts.²³ Yet, a classification has to be highly flexible so that any situation

22 Antonjan, J. M. *Rol konkretnoj zhiznennoj situacii v sovershenii prestuplenija* [The Role of a Specific Life Situation in Committing a Crime]. Moskva: Izd-vo Akad.MVD SSSR, 1973, p. 6.

23 For more information on the classification of situations of criminal acts, see: Matulienė, S. *Kriminalistinė nusikaltimų charakteristika nusikaltimų tyrimo metodikoje: teorinių ir praktinių problemų šiuolaikinė interpretacija* [Criminalistic Characteristics of Crimes in Crime Investigation Methodology: Modern Interpretation of Theoretical and Practical Problems]. Vilnius, 2004, p. 140–145.

could move from one classification group to another, since ‘a situation is a systematic model which has a potential dynamism’²⁴.

Time and space factors occupy a special place in the structure of the situation of a criminal act. All elements exist in space and time. On one hand, they are separate elements of the situation, on the other hand, they are a unifying beginning which enables to put all elements into a single situation. Criminalistic characteristics of time are broader than the conception of time in criminal law. Time is important to the latter only when the actual time of a criminal act is determined. Meanwhile in criminalistics, important is the time of preparations, the time of traces concealment and the time of certain processes and phenomena. Time is a real period of a person who committed a criminal act, which records the beginning, the course and the end. The choice of time depends on objective and subjective factors and, partly, on the nature, object, place and surroundings of the planned crime, the criminal’s personal qualities, etc. The chosen time also determines the subject: it makes the criminal adjust his/her crime plan and influences the behavioural regime as well as the duration of presence in the place. In a criminalistic sense, the time of a crime is understood as a period of the subject’s activity, during which separate criminal actions are performed, and as the time of the performance of specific actions. The period of activity including preparation and commission of a criminal act, concealment of traces and consequences is defined by the year, month, day and the day of the week. The performance time of specific actions is defined by hours and often by minutes. Data on the time of a criminal act enables the introduction of the versions of preparation nature, participants, their personal qualities, the time and place of the emergence of the consequences of a criminal act, etc.

The conditions of place frequently determine a person’s behaviour and are directly or indirectly related to the scene of a crime. In some cases, a criminal uses the scene of the crime as an effect measure against the victim. It concretizes and individualizes the very criminal act. The scene of the criminal act in its criminalistic sense is a space existing in reality, chosen by the criminal and used to achieve the desired outcome, in which certain actions are carried out before, during and immediately after the criminal act.

According to the aims and motives of a criminal act as well as the stages of its commission, we can single out criminal acts committed without preparation and concealment (impulsive situations), criminal acts committed with preparation and concealment (traditional situations), etc.

The situation of criminal acts can be favourable or unfavourable to the person who intends to perform criminal actions.²⁵ If the situation is unfavourable, a criminal makes one of the two decisions: either abandons the idea of committing a crime in this situation and waits for another one or commits a crime. In the latter case, he/she tries to adapt

24 Zorin, G. A. *Teoreticheskie osnovy kriminalistiki* [Theoretical Foundations of Criminalistics]. Minsk: Amalfeja, 2000, p. 103.

25 Gavlo, V. K. Obstanovka prestuplenija kak strukturnyj komponent kriminalisticheskoy kharakteristiki prestuplenija. *Problemy sovershenstvovanija taktiki i metodiki rassledovanija prestuplenij. Sbornik nauchnykh trudov. Vypusk 15* [Crime Situation as a Structural Component of Crime’s Criminalistic Characteristics/ Problems of the Improvement of Crime Investigation Tactics and Techniques. Collection of Scientific Papers. Edition 15]. Irkutsk, 1980, p. 54.

to the existing environment—creates certain conditions, changes it, chooses another method of crime, etc. If the situation is favourable to the commission of the crime, the criminal implements his plans without changing anything.

The classification of the situations of criminal acts by the space and time of their commission is as important as classification on other bases, since criminal acts committed only at night (for example, arson attacks) differ from those committed in the daytime (thefts from apartments when no-one is at home), and murders committed in the countryside are different from those committed in urban areas. Relations are the same, only surroundings are different.

According to the nature of relations among persons during, before or after the commission of a criminal act, we would like to single out conflict, non-conflict, provocative, etc. situations.

For the investigation of cases it is important to collect data on the environment indicating the victim's initiative to create a conflict situation and on the environment showing that a conflict situation was brought about by the criminal or the environment in which both crime participants displayed a mutual initiative to create a conflict situation. During the investigation, we can also obtain a large amount of data on the personalities of the victim and the criminal from the environment showing a mutually indecent, immoral and depraved lifestyle, and a criminal act is a purportedly logical outcome of such a way of life.

In real life, we can observe quite a large number of conflict situations that do not end in crimes. This is because each specific situation is individual. Its individuality is determined by the personal qualities of people involved in the conflict.

Literature on criminalistics²⁶ provides a classification of criminal situations. Some authors²⁷ group criminal situations into pre-criminal, criminal and post-criminal situations. On their basis, we suggest classifying all criminalistics situations of criminal acts into the following groups:

- pre-criminalistic situations of criminal acts;
- direct situations of criminal acts;
- post-criminalistic situations of criminal acts.

Pre-criminalistic situations of crimes is a system of interrelations between conditions and circumstances, time and place, the crime object and the criminal, determining the method of crime. The modelling of the pre-criminalistic situation of a criminal act enables the understanding of the motive and aim of the committed criminal act, and also shows regular relations with the direct and post-criminalistic situations. Pre-criminalistic situations of criminal acts form and exist only before the performance of criminal

26 Volcheckaja, T. S., *supra* note 11, p. 69–72; Malevski, H. *Įvykio vietos apžiūra ir įvykio vietos tyrimas: naujas kriminalistinės koncepcijos modelis*. Daktaro disertacija. Socialiniai mokslai, teisė (01S) [Inspection of the Scene of the Incident and Investigation of the Scene of the Incident: New Model of the Criminalistic Concept. Doctoral dissertation. Social Sciences, Law (01S)]. Vilnius, 1997, p. 129; Granovskij, G. L. *Ehkspertnye zadachi: ponjatie, struktura, strategija peshenija. Teoreticheskie i metodologicheskie voprosy sudebnoj ehkspertizy* [Expert Tasks: Concept, Structure and Strategy of Decision. Theoretical and Methodical Issues of Forensic Examination]. Moskva: VNIIEh, 1985, p. 121.

27 Voltechaja, T. S., *supra* note 11; Malevski, H., *supra* note 26.

actions: a person realizes and considers various variants of behaviour, compares them with the immediate environment, chooses a method for committing and concealing the criminal act and evaluates his actions on the scene of the crime, if the situation needs to be adjusted. However, all the abovementioned actions form a pre-criminalistic situation of the criminal act only if they do not form the composition of another crime in its criminal–legal sense. Otherwise, it can become a direct situation.

The pre-criminalistic situation of a criminal act can be both favourable and unfavourable to a person who is committing a crime. In case of an unfavourable situation, a person makes a decision not to commit a crime or waits for a more favourable situation or creates by himself another situation favourable to him. Sometimes a criminal decides to commit a criminal act regardless of the situation. This situation is important for the investigation of crimes committed in certain circumstances, including the state of affect. A pre-criminalistic situation may have a highly diverse impact on the commission of a criminal act. Such a situation can be neutral to a criminal's behaviour or create difficulties for his behaviour. A criminal's connection to the pre-criminalistic situation shows his persistence and endeavour to commit a criminal act. This is very distinct when a person removes all obstacles to the commission of a crime. In situational crimes, a pre-criminalistic situation can encourage a spontaneous motive.

Direct situation of a criminal act is a system of conditions and circumstances in which a criminal intent was implemented. In these situations, a person performs actions directed at the achievement of a criminal outcome. The majority of items, processes and phenomena that are elements of a criminal act or crime objects exist as part of the immediate environment and enter the situation regardless of the subject's will. The other part enters this situation thanks to the criminal after he carries out preparation or concealment actions. Any separate element of a criminal act or environment is more or less related to the situation. It exists as a whole of material, social, psychological and other conditions.

Post-criminalistic situation of a crime arises after an incident that is being investigated and is important as during its course certain changes occur or may occur. It can be both natural phenomena and conscious or unconscious actions of people. Such situations include conditions in which traces are destroyed, falsified, staged, disguised and concealed, and other actions helping to avoid criminal liability are performed. Sometimes in such situations, a criminal loses his self-control: he becomes interested in the investigation of the case, property plundered during the crime is sold or the criminal himself uses it, and in order to improve his standing among his friends, he boasts of the crime. In other post-criminalistic situations, a criminal tries to stage a crime as an accident, destroys traces on the scene of the crime, and after that the very scene of the crime radically or partly changes. Therefore, it is highly important for the investigator to reconstruct a post-criminalistic model of the crime situation. The post-criminalistic situation is the final link in the chain of criminalistics situations of criminal acts, since it is followed by the investigation situation of a criminal act.

4. Investigation Situations of Criminal Acts

The study on the investigation situation of criminal acts, like, in general, the study on criminalistics situations, is one of the latest and most disputed issues of criminalistics.

The investigation situation of a criminal act is a criminalistics situation with closely interrelated circumstances which have an impact on each other and create a certain space where a person conducting an investigation acts. When examining the concept of the crime investigation situation, the situation should, first of all, be understood as relations that emerged during the investigation of a crime: relations among persons involved in the crime are relations among different participants in the proceedings during the course of the crime investigation (for example, among an operative and an official conducting a pre-trial investigation as well as a prosecutor controlling a pre-trial investigation, between an official carrying out an investigation and a suspect or a victim, etc.). It is realized as a whole of information on the incident under investigation possessed by the investigator. It also covers real situations which arise during the investigation of criminal acts, information models and an objectively existing complicated system of conditions.²⁸

According to Kuklianskis, the investigation situation of a criminal act is, first of all, understood as relations that form during the investigation of a criminal act (inter-relations among persons involved in this act) and relations during the court hearing as well as relations among different participants in the proceedings (for example, an investigator's relations with suspects or witnesses, relations between an investigator and other participants in the proceedings, etc.).²⁹ The investigation situation of a criminal act is realized as a whole of information on the incident under investigation possessed by the investigator. It also covers real situations which arise during the investigation of criminal cases, information models and an objectively existing complicated system of conditions.³⁰ 'An investigation situation can also be defined by the word "phenomenon" (phenomena which emerge during crime investigation: the crime has been investigated, has not been investigated, etc.)'³¹; therefore, we can point out that the whole of circumstances (relations and phenomena) that arise during crime investigation are constituent parts of the situation.

We can state that the investigation situation of a criminal act is a whole of information possessed at a specific moment by an investigator who is conducting a pre-trial investigation concerning a criminal act, persons who committed it and other details relevant to the investigation.

It is important to understand the difference between the crime investigation situation and other situations arising in other areas. It is necessary to stress that the situation under examination develops in a specific activity, i.e. in the crime investigation activity.

28 Zorin, G. E., *supra* note 24, p. 103–104.

29 Kuklianskis, S. Teorinės tardymo situacijų problemos [Theoretical Problems of Inquiry Situations]. *Kriminalinė justicija*. 1996, 5: 91.

30 Zorin, G. E., *supra* note 24, p. 103–104.

31 Kuklianskis, S., *supra* note 29.

Primarily, this activity is strictly regulated by legislation; it is implemented by procedural and operational measures established by laws. Taking into consideration the fact that crimes are mainly committed regularly, they are investigated on the basis of particular criminalistics regularities. Consequently, crime investigation is determined by laws and criminalistics regularities, and the existing situation (investigation situation of a criminal act) differs from situations of a different activity.

The investigation situation reflects the state of the investigation, which objectively forms at its different stages, thus being influenced by a large number of factors. The structure of all crime investigation situations is not identical. It depends on the nature of the committed crime, the stage of investigation, behaviour of participants, etc.

The structure of the crime investigation situation is heterogeneous and changing. It consists of many elements which are grouped into bigger units. We will conditionally call the latter components.³² Interacting components complement each other and form a unique and unrepeatable crime investigation situation.

Zorin³³ notes that a crime investigation situation consists of four groups of components:

- Psychological components: outcome of the conflict between an official conducting an investigation and psychological qualities of persons hostile to him or persons involved in the investigation, i.e. use of an expert, prosecutor, operative, etc.
- Information components: knowledge that an official conducting an investigation has (of circumstances, possible evidence, possibilities for finding it, a possible expert investigation, places of finding evidence, etc) and knowledge that other persons involved in the investigation have (e.g. what an official conducting an investigation knows about a possibility of finding witnesses, about evidence that was and was not obtained, about further actions of an official conducting an investigation).
- Procedural and tactical components: the state of investigation course, evidence and its sources, a possibility for choosing persecution measures, isolation of persons involved in the investigation from each other and performance of a specific investigation action.
- Material and organizational technical components: the whole of communications between the unit of duty officers and the group of operational search, the whole of instruments for transmitting information by using available equipment for officers and a possibility of manoeuvring mobile forces and measures.

The very official carrying out an investigation has to understand the structure of the existing investigation situation in order to realize what component of the situation is missing or insufficient. Only then he/she can take appropriate measures and actions to deal with the problem, since the investigation situation of a criminal act determines the tactics for specific investigation actions. Its evaluation is made by the very tactical de-

32 Component is a constituent part (*Dabartinės lietuvių kalbos žodynas* [Dictionary of Contemporary Lithuanian]. Vilnius: Mokslo ir enciklopedijų l-kla, 1993, p. 322).

33 Zorin, G. E., *supra* note 24, p. 379.

cision which assumes its external form during the planning of investigation. Only being aware of what we are lacking for a successful investigation, we will look for ways and measures to remove those obstacles. Proper understanding of components and factors of the existing investigation situation of a criminal act that have an impact on its formation is not related to the types or groups of crimes and influences all of them in the same way. This is typical of tactical categories. A detailed analysis of the structure is a basis for a successful course of the investigation process.

Summarizing the above, we can state that the abovementioned four components represent the essence of the crime investigation situation. Their quantity and extent in a specific situation determine the choice of a tactical method. The above components are common to all different types of crime—it is a common structure of the criminal act situation; however, each component consists of separate elements which are characteristic of a specific crime only.

Crime investigation situations used in criminalistics techniques are typed, since particular techniques used individually are calculated exactly according to typical crime investigation situations. Yet, a question arises: is it possible to type crime investigation situations?

A complicated composition of the investigation situation of a criminal act and a large number of objective and subjective factors having an impact on its structure and nature together form a great number of variants of the investigation situation and each of them is always different from the others. A specific investigation situation is always individual and, therefore, an absolute typing of the composition of a criminal act is impossible. It is possible to type investigation situations only according to one of their components. Usually one of the elements of the components that is of information character, namely, all information on the incident and its participants, is chosen as an object of such typing. Consequently, it is important to be able to single out from the majority of elements of the components making up an investigation situation of a criminal act the elements on the basis of which it would be possible to make various scientific recommendations for improving the investigation process. Singling out of these dominant elements in prevailing crimes would help an investigator use the practice of other investigators in similar situations and properly evaluate the situation.

The expression ‘a typical investigation situation’ is conditional. This does not mean, however, that the significance of a typical investigation situation is completely denied, at least by one component of the investigation situation of a criminal act or its element. Yet, we must not overestimate the significance of such typical investigation situations and properly determine the object of typing and a concrete dominant element.

Typical crime investigation situations have a model-information access. As Drapkin³⁴ states, ‘[t]ypical crime investigation situations represent a result of the generalization of existing scientific signs which are common in certain identified crime investigation situations’.

34 Drapkin, L. J. *Osnovy teorii sledstvennykh situacij* [Foundations of the Theory of Investigation Situations]. Sverdlovsk, 1987, p. 14.

Typing of criminal act situations by a specific chosen object and their classification by different essential distinguishing features form the basis for the course of the investigation process, which facilitates scientific recommendations on how to deal with a situation, the structure of which exhibits several distinct generalized dominant elements. It is necessary, however, to remember that it is practically impossible to formalize the situation by strictly established criteria, as the situation consists of various components: psychological, procedural, material, technical, biological, moral, etc.

The characteristics of the components making up the structure of the investigation situation of a criminal act are changing; therefore, it is highly important to know what classification group of investigation situations it falls into.

When classifying investigation situations of a criminal act, like any phenomenon in a social sphere, we cannot apply one criterion of classification only. They should be grouped by content, scope, nature of a situation, etc.

An investigation situation, irrespective of its classification groups, expresses systems of dynamics which change their composition, structure and form affected by different internal and external factors.³⁵ This idea expressed by Drapkin was accepted by Luzgin: '[a]ny situation of those exhibits episodic relations between items and phenomena of the material world'.³⁶ As investigation situations are dynamic, we can divide them into the following groups according to the relation with the investigation process:

- beginning (initial) investigation situations of a criminal act (a situation that arises at the beginning of investigation when the fact of the crime is recorded by officials conducting a pre-trial investigation and a pre-trial investigation is launched, i.e. accumulation of all initial information on the incident);
- transitional investigation situations (situations existing throughout the investigation, i.e. the process of the collection of data on the criminal act);
- final investigation situations (situations that arise during the decision-making on the completion of the investigation process, for example, reconciliation of persons, discontinuation of the pre-trial investigation).

Another classification to discuss is the one based on the study of situations at different levels.³⁷ These situations depend on the level of tasks tackled in the pre-trial investigation material. Situations classified on this basis are the following: situations of strategic significance (situations related to the tackling of investigation tasks when, at the crime investigation stage, identified circumstances belonging to a proved subject are added) and situations of tactical nature (situations of a narrower scope that have a local potential; their development during the preparations for a specific investigation action, during its performance and tackling of this action's tasks is their distinguishing feature).

35 Belkin, R. S. *Kriminalistika: problemy, tendencii, perspektivy* [Criminalistics: Problems, Trends and Prospects]. Moskva: Juridicheskaja literatūra, 1988, p. 96.

36 Luzgin, I. M. *Sledstvenye situacii: ikh suchnost i osnovnye cherty* [Investigation Situations: Their Essence and Key Features]. *Pravo* [Law]. 1991, 25: 45.

37 *Kriminalistika* [Criminalistics]. Moskva: Jurist, 1995, p. 55.

It seems that the abovementioned situations complement each other. Strategic situations are of a wider scope and, in essence, cover situations of tactical significance. Therefore, when beginning problem solving linked to the choice of a tactical method, it is always necessary to start with situations of tactical character, a consistent chain of which will help achieve a desired solution of the situations of strategic significance.

Each investigation situation, whether it is at the initial or the transitional stage of investigation, can be complicated and confusing or, on the contrary, extremely easy. On this basis, we can classify such crime investigation situations into the following groups: ordinary crime investigation situations (when sufficient information is available for creating a homologous model and everything is clear regarding further investigation) and complicated crime investigation situations (when the lack of information requires modelling several variants of a situation).

In literature,³⁸ investigation situations of a criminal act are classified in very different ways. The classification of crime investigation situations can be highly diverse and multiple. However, those which can be realized in practice during the investigation of a specific criminal act are of the greatest importance.

Such a diverse classification of investigation situations of criminal acts shows that there are a considerable number of motives by which situations can be classified. Consequently, their classification does not have strictly defined boundaries and any crime investigation situation can, at any moment, transform into another kind of the crime investigation situation. Typing and classification of crime investigation situations at various crime investigation stages of certain types of crimes have the highest practical significance and relevance. A typical crime investigation situation will definitely be different at the initial stage of examination of pre-trial investigation material in the event of murder and in the event of theft. It is even not worth arguing about the fact that the complexity and problems as well as conflicts of situations in different groups of crimes will also be of different level. Therefore, taking into account a situation that arose due to the investigation of a certain crime, tactical methods for solving them are developed.

5. Proceedings Situations

Criminalistics emerged as a science of crime investigation. At the initial stage of its recommendation, only the pre-trial investigation was discussed. Yet, later the evolution of the science of criminalistics and case-law demonstrated that criminalistic recommendations are also successfully used in the proceedings³⁹ (for example, in complicated cases, a plan of the hearing is prepared).

In legal literature, the tactics for the proceedings is discussed very little. Frequently authors identify proceedings situations with investigation situations of criminal acts.

38 Drapkin, L. J., *supra* note 34, p. 157; Kuklianskis, S., *supra* note 29, p. 95.

39 Volcheckaja, T. S., *supra* note 11, p. 111.

No-one has studied this in Lithuania yet and, in foreign literature, only some Russian scientists⁴⁰ stress the importance of this object as a subject of the criminalistic doctrine.

Examining criminalistics situations according to the conditions for situation development and the environment in which the activities of an investigator, operative, judge or expert are taking place, Oblakov singles out crime investigation, operational search, judicial and expert situations.⁴¹

Other scientists do not assign the proceedings of criminal acts to the science of criminalistics, as they believe that there is no basis for or proof of the necessity to study and examine the tactics for the proceedings within the limits of the criminalistics science. Supposedly, significant issues such as the planning of the proceedings are a subject of the criminal procedure science.⁴²

We agree with Volcheckaja that it would also be possible to look at the tactical issues of investigation from such a position, as the majority of actions are regulated by the Code of Criminal Procedure as well and thoroughly examined by scientists–processualists.⁴³

We agree that there are situations in the proceedings which form the basis for this activity (for example, a sequence of actions); therefore, this is clearly regulated by the law and is the subject of a study by processualists. However, in addition, according to relevant judicial situations, methodical recommendations (for example, on interviews of participants in the proceedings) based on the law but not necessarily of a binding methodical character can be made for the optimization of judicial activities, thus opening up an opportunity for the court for a creative space when establishing the truth in the case. Yet, in that case as well, it is necessary to remember the difference between procedural regulation of an action and its tactical performance.⁴⁴

We dare not deny that criminalistics investigation situations are very closely related to the stages of a pre-trial investigation. Probably no-one of the representatives of the criminalistics science even doubts the necessity to study and examine the tactics of a pre-trial investigation, and no-one doubts their significance to crime investigation.

A criminal act and its investigation, like any other phenomenon, have the beginning and the end. Bringing a case to court where a hearing of a criminal act is taking place and, upon the completion of the procedure, an appropriate decision is reached (for example, a conviction) is one of the methods for completing the investigation of a criminal act.

40 See: Gavlo, V. K. *Teoreticheskie problemy i praktika primenenija metodiki rassledovaniya otdelny kh vidov prestyplenij* [Theoretical Problems and Practice of the Adoption of Techniques for the Investigation of Separate Types of Crimes]. Tomsk, 1985; Volcheckaja, T. S., *supra* note 11.

41 Volcheckaja, T. S., *supra* note 11, p. 65.

42 Vasiljev, A. N., *et al. Predmet, sistema i teoreticheskie osnovy kriminalistiki* [Subject, System and Theoretical Foundations of Criminalistics]. Moskva: Izd. Mosk. un-ta, 1984, p. 43–44.

43 Volcheckaja, T. S., *supra* note 11, p. 112.

44 *Ibid.*, p. 112.

Upon the completion of a pre-trial investigation, the next stage—the proceedings—begins. At the same time, investigation situations do not disappear; rather they transform into proceedings situations.

Although during the proceedings the circumstances of the same crime are considered, as we have already mentioned at the beginning of the work, it would be wrong to identify these situations with investigation situations, since they emerge at a completely different time and in a completely different environment (the procedure takes place in court), participants in the procedure partly change and differ (a pre-trial investigator disappears and a judge appears) and the very rules of the procedure differ.

Proceedings situations, first of all, should be understood as relations that form among participants in the procedure during the trial.⁴⁵ These are the relations between a judge and a prosecutor, a judge and defendants or their defenders, among defendants, victims themselves, etc. Although some participants in the procedure are the same (for example, suspects who became defendants and a prosecutor), situations emerging between them can differ from those that existed during the pre-trial investigation (for example, if at least one suspect who refused to give evidence during the pre-trial investigation decided to give it in court and it is unfavourable to any other suspect, former non-conflict situations can change into conflict and even aggressive ones).

A proceedings situation emerges in a specific activity, in an activity of the hearing of a criminal act which is strictly regulated by the law, like crime investigation.

Taking into account the above, we suggest calling the whole of various circumstances (phenomena, conditions and relations) that forms at a definite time during the examination of a criminal act in court a proceedings situation.

In our view, these situations, like investigation situations of criminal acts, are affected by different factors, only, unlike a crime investigation situation, this one forms under the influence of subjective factors rather than the objective ones, since the procedure which can change under the influence of objective factors not depending on the participants in the procedure, i.e. the very pre-trial investigation, is completed when the case goes to court where data relevant to the case is no longer collected, but examined.

We believe that subjective factors such as the psychological state and personal qualities of the participants in a trial and unpredictable factors of persons' behaviour can lead to mostly unfavourable or conflict situations.

Taking into consideration the fact that an investigation situation transforms into a proceedings situation at a certain moment, they can be classified on bases similar to investigation situations.

In our opinion, proceedings situations can be divided into the following groups:

- *by complexity*: ordinary situations (for example, in case of a small number of procedure participants) and complex situations (in case of the complexity of the procedure as a result of the number of participants and the scope of the case);
- *by character*: typical situations (which are characteristic of the consideration of a specific type of crimes or their group, for instance, consideration situations

45 Kuklianskis, S., *supra* note 29.

of property crimes differ from consideration situations of violent or financial crimes) and specific situations (which arise during the examination of specific crimes, for example, violent crimes against juveniles);

- *by favour to the hearing*: favourable situations (for example, where all participants in the procedure show favour and do not delay the hearing of the case) and unfavourable situations (where participants in the procedure try to delay the hearing of the case);
- *by difficulties and barriers encountered*: problematic and non-problematic situations;
- *by the nature of relations*: conflict situations (prolonged and short, aggressive and quiet), non-conflict, provocative, etc. situations.
- *by the age of defendants or other participants in the procedure*: for example, situations arising during the hearing of cases with juvenile defendants are definitely different from those with adult defendants;
- *by the emotional state of procedure participants*: positive and negative situations;⁴⁶
- by other criteria.

It is practically impossible to indicate all circumstances on the basis of which proceedings situations, like other criminalistics situations, can be classified, since the bases on which they are grouped are dynamically changing; therefore, one and the same situation can move from one group to another at different moments.

Making of legal, fair and reasonable court decisions is possible only after a comprehensive, thorough and objective consideration of the circumstances of the case and a relevant situation.⁴⁷ Consequently, comprehensiveness, thoroughness and objectivity of the proceedings are ensured by not only requirements of the criminal law, but also proper use of criminalistic recommendations.

Conclusions

While trying to objectively and comprehensively investigate a criminal act, we encounter situations of criminal law (when qualifying crimes properly). While organizing and implementing crime prevention, we inevitably face criminological situations. And while determining how a crime was committed, we encounter criminalistics situations. However, all of them are united by the fact that they represent specific situations which can conditionally be called criminal situations.

A criminalistics situation is the whole of different circumstances (relations) among participants in a criminal act (the victim and the criminal, accomplices, the investigator and the suspect, the investigator and the prosecutor, the prosecutor, the judge and the suspect and/or his/her defender, etc.); the whole of different circumstances (relations) forms before the commission of a criminal act, during its commission, after the commis-

46 Zorin, G. E., *supra* note 24, p. 106.

47 Volcheckaja, T. S., *supra* note 11, p. 111.

sion of a criminal act when it is being concealed or during the investigation of a criminal act and court hearing. The system of the criminalistics situation consists of the situation of a criminal act, the criminal act investigation situation and the proceedings situation.

During the examination of the situation of a criminal act, the following is established: the degree of preparations for a criminal act, the impact of the environment on its method and mechanism, the elements of the situation that had the major impact on the course of a criminal act and its results, and their relation to the personality of the subject, also possible accomplices of the criminal, witnesses, their whereabouts, the time of the criminal act and other elements of the immediate environment during the commission of the crime. Thus, the peculiarity of the situation of the criminal act influences the investigation when determining, in one way or another, the method and mechanism of the criminal act, and different deviations in the criminal's behaviour during the commission of the criminal act.

An investigation situation of a criminal act is the whole of various circumstances (phenomena, conditions and relations) that forms at a definite time during the investigation of a criminal act, and proceedings situations arise at a definite time during the examination of a criminal act in court.

The classification of situations enables their structurization and establishment of their constructions, dominants, core and periphery. Proper classification of criminalistics situations allows the determination of their strategic and tactical characteristics and the prediction of their course and likely outcome.

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MOKYMO APIE KRIMINALISTINES SITUACIJAS AKTUALIJOS

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Santrauka. Straipsnyje nagrinėjama viena iš reikšmingiausių kriminalistikos teorijos ir nusikaltimų tyrimo metodikos kategorijų – kriminalistinė situacija. Jame nagrinėjamos tokios sąvokos kaip „kriminalinė situacija“, „kriminalistinė situacija“, „nusikaltimo situacija“ ir „nusikaltimų tyrimo situacija“, jų turinys, klasifikacija bei tarpusavio ryšiai.

Tiriamą nusikalstamas veikas, susiduriama su baudžiamosios teisės, kriminologinėmis ir kriminalistinėmis situacijomis. Tačiau jas visas jungia tai, kad jas sudaro konkrečios situacijos, kurias galima sąlyginai pavadinti kriminalinėmis situacijomis. Tinkamai išanalizavus ir suklasifikavus nusikalstamų veikų situacijas, galima nustatyti jų tyrimo atvejų strategines bei taktines charakteristikas, prognozuoti jų eigą ir tikėtiną rezultatą.

Tiriama nusikaltimo kriminalistinės esmės išaiškinimas paprastai prasideda būtent nuo situacijos, kurioje nusikaltimas buvo padarytas, suvokimo ir tyrimo. Tam tikra aplinka, apibūdinanti situaciją, gali palengvinti arba pasunkinti nusikalstamos veikos padarymą atitinkamu būdu. Labai dažnai aplinka lemia, kad nusikalstamos veikos būdas tampa susijęs su šia aplinka. Be to, ji dažnai turi esminį poveikį nusikalstamos veikos padarymo mechanizmui. Yra svarbu nusikalstamų veikų tyrimo reikmėms išryškinti santykius ne tik nusikalstamų veikų padarymo metu, bet ir prieš jas padarant bei po jo padarymo.

Dar vienas iš naujaisių ir labiausiai diskutuotinių kriminalistikos klausimų – mokymas apie nusikalstamų veikų tyrimo situaciją. Nusikalstamos veikos tyrimo situacija suprantama kaip tarpusavyje glaudžiai susijusios aplinkybės, viena kitai turinčios įtakos bei sudarančios

tam tikrą erdvę, kurioje veikia tyrimą atliekantis asmuo. Ji suprantama kaip informacijos apie tiriamą įvykį visuma, kuria disponuoja tyrėjas, tai taip pat realios situacijos, atsirandančios tiriant nusikalstamas veikas, informaciniai modeliai, bei objektyviai egzistuojanti sudėtinga sąlygų sistema.

Straipsnyje nagrinėjama dar viena kriminalistinių situacijų rūšis – teismo nagrinėjimo situacijos. Teismo nagrinėjimo situacija susiklosto specifinėje veikloje.

Šias, kaip ir nusikalstamų veikų tyrimo, situacijas veikia įvairūs veiksniai. Tik ši, skirtingai nei nusikaltimo tyrimo situacija, formuojasi veikiama daugiau subjektyvių negu objektyvių faktorių, nes, bylai atsidūrus teisme, duomenys, turintys reikšmės bylai, jau ne renkami, o tik nagrinėjami ir vertinami.

Situacijas suklasifikavus, galima jas struktūrizuoti, nustatyti jų konstrukcijas, dominantes, branduolį, periferiją, jų strategines ir taktines charakteristikas, prognozuoti jų eigą ir tikėtiną rezultatą.

Reikšminiai žodžiai: *baudžiamasis procesas, kriminalistika, nusikaltimų tyrimas, kriminalinės nusikalstamų veikų situacijos, nusikalstamų veikų situacijos, nusikalstamų veikų tyrimo situacijos.*

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