

Application of the Technical Investigative Power of the Prosecutors

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Abstract

The revision of the new criminal procedure law incorporates the technical investigative power of the prosecutors. Therefore, when defining the concept and characteristics of the technical investigative power of prosecutors, it is necessary to combine the improvement of the new criminal procedure law, the thorough understanding of the application scope of this power, the application object, and the necessity have practical significance that cannot be overlooked for future procuratorial undertakings.

Keywords

Technical investigation; Secrecy; Necessity.

1. Introduction

With the gradual improvement of legislative procedures, after many years, the new criminal procedure law has undergone an all-round revision, in this revision; the newly-added technical investigative power of the prosecutors has undoubtedly become one of the topics most concerned about by the theoretical and practical circles. Since the previous law did not clearly and fully stipulate the technical investigative power of the prosecutors, thus making this power become an empty talk. However, society is constantly developing, technology is constantly advancing, criminals' crime practice has become increasingly complex, anti-investigation capabilities have gradually improved, and the technical means that used to be can no longer meet the current situation. In order to better adapt to the crime forms under the new situation, professional and efficient technical means have undoubtedly become the inevitable choice now. This paper will explain the concept, characteristics, application principles and application in practice of technical investigation power.

2. Concept of the Technical Investigative Power of the Prosecutors

The technical investigation power is a measure when public security organs, prosecutors and other judicial authorities conducting investigative activities, they use unique technical means such as electronic monitoring, secret video, secret photography investigate suspects. Technical investigations make suspects expose their crimes without knowing it, so as to better combat crimes and protect human rights.

3. Characteristics of Technical Investigation Power

3.1. Secrecy

Technical investigations must first be secret, it must be investigations when the other clients do not know it, so as to further grasp the criminal dynamics and take corresponding measures to deal with it, and it is what we call "secret investigations." Secret investigations are relative, not absolute. Objectively, the prosecutors should consciously or artificially adopt certain investigative means against suspects, and subjectively have a strong confidential sense about

the means adopted, in the selection of personnel, in order to ensure secrecy, we should select professionals who are more experienced and engaged in investigation cause to avoid accidents during execution. It is precisely that because the secrecy of technical investigations makes it possible to damage the legal rights of the clients during the operation of the power, in order to protect the legitimate interests of the persons involved, the prosecutors must undertake the corresponding confidential work in order to protect the personal interests of the clients.

3.2. Technicality

Technical investigation not only require investigators to have higher cultural literacy, can act according to circumstances and take a tense situation calmly, but also to rely on certain technical conditions, the so-called technicality means that investigators can combine their work with modern science and technology when handling criminal cases, can better grasp the information that they can't know through certain technological conditions. For example, electronic monitoring, secret photography and other technological means require the cooperation of modern technology.

3.3. Compulsion

Investigation measures can be divided into compulsory investigation measures and arbitrary investigation measures, the fundamental difference between the two is whether the investigative agency has taken measures to restrict citizens' personal freedom and deprive individual of legal property rights when taking actions, compulsory investigation measures are actions taken by prosecutors against the wishes of the clients and restrict citizens' legal rights, such as arrest, search, etc.; arbitrary investigation measures is measures taken without violating the clients' will and do not cause undue property losses to the clients, such as interrogating suspects.

4. Applicable Principles of Technical Investigations

4.1. Examination Principle

First of all, because the prosecutors is the supervisory organ of our country, it plays an objective and fair role, whether it is in the investigations, examination and prosecution, or trial stage, it should play its due supervisory role and prevent a series of illegal acts such as torture, since technical investigation is a legal investigation means, it can't get rid of the supervision of prosecutors, and prosecutors have the right to examine compulsory measures including technical investigations. Secondly, it is also determined by national conditions of our country. In the West, courts are divided into preliminary courts and trial courts, the trial and adjudication of cases are separated, this ensures that judges of different courts will maintain an objective and fair position in deciding and judging cases, but for our country, the difference from Western countries is that our country does not have a preliminary court, and the trial and judgment of cases are often made by the same court, it is difficult to ensure the neutrality of judges, they may be prejudiced by first impressions and have prejudice against individual opinions in the trial of earlier cases, which makes the judgment result unsatisfactory and unfair.

4.2. Relevance Principle

The relevance principle is the fact that when prosecutors adopt technical investigation measures, they must target suspects and related persons who have interest in the case, and should not take technical investigation measures against persons not related to the case, the prosecutors should provide appropriate compensation in the case of illegally taking technical investigation measures and causing damage, moreover, when taking investigation measures, the prosecutors should minimize the use of monitoring equipment that is not related to the case,

the personal privacy of clients who has been learned nothing to do with the case should be kept confidential and should not be disclosed.

4.3. Specific Principle of Applicable Scope

According to the provisions of the criminal procedure law, the applicable scope of technical investigations is limited to crimes with heavier penalties and crimes that have secrecy and cannot be known by other means. The reason for limiting the scope of technical investigations is to protect the legitimate rights and interests of citizens, protect citizens' privacy and personal information, and prevent undue damage to person concerned and innocent third parties due to the application of technical investigations.

4.4. Relief Principle

The relief principle is the right when the technical investigation measures taken by the prosecutors damage the legitimate rights and interests of the clients, they can appeal to the relevant state organs, request court to retry the case and provide relief for the losses caused. Including the clients' right to know, on the premise of not hindering the investigation and will not cause damage to human rights, the clients should be informed of relevant technical investigation measures timely, so that they can better protect their legal rights, in allusion the unreasonable acts of the prosecutors, if the clients believes that their acts harm their own interests and caused losses to them, the clients have the right to appeal to the higher authorities, and if they are dissatisfied with the appeal result for the higher authorities, the clients have the right to appeal to the court. In allusion to cases of state compensation, when the court or the relevant prosecutors examines the legality and rationality of its acts and determines that its act is illegal, they have the right to request the relevant compensation organs to make reasonable state compensation.

5. Present Situation of Technical Investigation Measures in Practice

The application of technical investigation measures has not only been vigorously developed in our country, but also widely used in Western countries, various countries have begun to use technical investigation measures as legal weapons to fight crime and protect human rights, for example, Germany, the United Kingdom and even the United States, which attaches great importance to civil rights. The application of technical investigations is not unlimited, and it must follow certain procedures, it must be conducted in accordance with the applicable conditions and scope of the law under the premise of the criminal procedure law, and cannot go beyond the legal framework.

At present, as far as China's practice is concerned, the most widely applicable scope of technical investigation measures is duty-related crimes; the main body of this type of crime is state officials, most of them have high intelligence quotient, have greater rights, status, and wealth, social experience, on the basis of their special national status, they have complex interpersonal relationships and social circles in society, they have strong anti-investigation capabilities in any field of society, therefore, for such crimes, if only ordinary investigation measures are used, it will undoubtedly increase the investigation difficulty, it will not only fail to bring the suspect to justice, and may even lose the investigators' life, therefore, it is necessary to severely fight this type of crime, protect the national interests and the legitimate rights and interests of citizens, and realize the legal principles that are compatible with crimes, responsibilities and punishments, it is necessary to exercise the technical investigation power of the prosecutors and use the law to give them more investigation means and measures, while strengthening the capacity of prosecutors, stepping up efforts to fight illegal crimes, eliminate the existence of corruption and bribery, and achieve the most reasonable trade-off between punishing crimes and protecting human rights.

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