

Principles of interaction of the participants of a process in pre-trial criminal production

Abstract: Analysis of criminalistical recommendations on interaction of the participants of a process and their correlation with the provisions of the CPC is allowed to assert about presence of contradictions, gaps and essential errors in the criminal-procedural legislation which is negatively reflected and excluded using of this way of combat crime.

It is considered the principles, types, forms and stages of interaction; it is given the recommendations of scientifically-practical nature.

Keywords: participants of a process; interaction; an investigator; operation officer; principles; information; organization.

Analysis of effective criminal-procedural legislation of Azerbaijan Republic allows classifying interaction carrying out during performance of pre-trial production on the two grounds: a) interaction on the subjects; b) interaction on the objects of activity.

Interaction of the subjects consists of interaction between an investigator, operation officer, and prosecutor carrying out procedural leadership with preliminary investigation on criminal case, the chiefs of investigative bodies and bodies of inquiry in various combinations.

The possible statements that the victims, citizen plaintiffs, experts and specialists should be related to the subjects of interaction are wrong since the activity of the listed participants of criminal process are not agreed on place, time and goals with activity of others, but is fulfilled parallel. Possible links-up are not caused with

♦**Jamalov Ilkin Jalil oğlu** – PhD in Law, a member of Council of the
International Organization for Legal Researches (Azerbaijan).
E-mail: djamalov_i@mail.ru

commonality of the specific goals, but they appear under convergence of the interests.

Interaction on the objects of activity is carried out under: initiation of criminal case; application of the measures of procedural coercion; providing of the civil claim; production of organizational measures and investigative actions; search of an accused.

The most interest and practical significance has interaction between an investigator and operative officers of the bodies of the executive authority.

In order to it would be spoken about an investigator and operative officer that they interact, they should minimum agree a place of performance investigative and operational-searching measures, time their execution and the goals, which are planned to achieve by them.

The main principle, providing correct and effectual interaction, should be considered a strict observance and implementation each of interacting parties determined by the CPC and other normative acts for her functions, characteristic her techniques and methods. This means that from one side inadmissibility of fulfillment by the investigators even separate operational-searching measures and from other side – maximum possible releasing of operation officers from inappropriate functions on production of the investigative actions.

Meanwhile, article 85.4.7 of the CPC says that an investigator has the right to charge a proper inquiry body or inquirer performance of separate investigative actions.

This provision is presented wrong. It would be right to arrange the work of the proper bodies of executive authorities (MIA, MNS, Ministry of Justice and the Customs) such way that the operation officers carry out only operational-searching measures, and all other investigative action would perform only by the investigators.

The second principle of effective interaction is a principle of the mutual coordination of the actions of an investigator and operation officer, directly coming from the stated definition of this concept and supposing detailed information about organized investigative actions and operational-searching measures and their results.

This assertion raise objections to some scholars and operation workers, since a number of the acts of the MIA of former USSR had contained a certain restrictions of the rights of investigators on such familiarization. These restrictions, mainly, came to the fact that an investigator, in the best way, had the right to familiarize with results of performance that or other operational-searching measure, but he had not had the right a source of information received and the methods of its obtaining (2, p. 46). It seems that a similar infringement of the rights of an investigator to know everything that is carried out on investigated by him case, contradicts elementary logic, and often fraught with highly negative consequences.

Observation of considered principle of organization of interaction is supposed not only the fact that investigative actions and operational-searching measures are performed to achieve one goal so in order to be complement mutually of one other, but also it is inadmissible production of the operational-searching measures enabling to affect in the process and results of investigative action or to deprive of an evidential significance any fact. No less then, it is inadmissible production of investigative actions enabling to interpret the sources of operational-searching information or secret working methods of the bodies of inquiry. What is more, in process of organization of interaction it is necessary in the same level to observe the both named conditions.

It seems that dialectic unity of the two indicated principles – strict separation of characteristic each apparatus of functions and constant coordination performed measures – is inherent for all variety of the forms and methods interaction between the investigators and operation officers, and strict observance of them is to a certain extent a guarantee of the effectiveness of such interaction (1, p. 43).

In addition, there are three more terms of the effectiveness of interaction, which on its significance can be related to the principles, which are necessary to know and observe.

First, this known provision from the theory of organizing of labour – an initiative of any interaction should com from the side, which is interested in achieving of the final results and the goals of interaction. Applicably to considered theme it means that, as rule, an initiator of the interaction should be an investigator.

Certainly, above stated does not mean that the initiative cannot and must not come from the operation officers, who are also interested in the soonest exposure of a person accused in investigated crime.

Second terms of the effectiveness of interaction has to a certain extent psychological nature since its observance has to provide mutual interests of interacting parties, improving of human relations between them. We are talking about necessity of each from interacting sides always to take in account the specific interests of other. For instance, an operation officer is always interested in detection of earlier committed crimes. Knowing about this, an investigator has to make the maximum efforts in order to check whether accused on this case has committed yet other crimes.

At last, third term – coordination of applied principles in organization of the work in both interacting services. Only observance of this term can provide maximal stability of interacted pair an investigator – operation officer. Such stability, constant interaction, as rule, increases efficiency of interaction in a few times (3, p. 374-375).

Such coordination of the principles organization of work can be achieved if type of specialization of the investigators and operation officers of each body of inquiry have to concur, even in spite of difference in staff's quantity of investigative and operations bodies.

It is possible any objection that similar interaction is caused an abuse of the service duties, but excluding it from arsenal of combat to crime does not guarantee exclusion the abuses.

Practice of combat to crime worked out and tested a number of specific forms and methods organization of interaction of an investigator and operation officers.

The first of these forms is the organization urgent mutual-exchange of information on committed crimes. The experience shows that practically all information and statements about committed crimes are received by the inquiry's officers from citizens and officials. Therefore, application of the term “mutual” has sooner the theoretical nature than practical one. Only the theoretically can be assumed that an investigator receives first information about crime. On practice the organization of interaction means to provide to an investigator with information in

time. It is carried out by the various ways, which depend on specific of the work of an investigative body. It is important urgently to provide an investigator with information so that he could be immediately to begin investigation. In connection with this, it would be reasonable to foresee an obligation of such information in the law (1, p. 45).

The next form of interaction is a joint visit an investigator and operation officers to a place of committed crime. The purpose of this visit is inspection of the place of incident and acceptance joint coordinated measures to expose of crime on “hot pursuit”. Necessity of such form of the interaction is caused: first, by the fact that none ideal report of inspection of the place of incident made up by the inquiry officers can provide an investigator with full volume of information about mechanism of investigated crime, left traces of crime. He can get more himself doing inspection. In addition, being at the place, the investigator has opportunity also to carry out some other urgent investigative actions (interrogation of the victims, witnesses, search etc.), which in the most cases provide exposure of crime. On other side – a presence of the investigator at the place of incident is allowed to the operation officers arrange parallel production of a complex operational-searching measures (from search of the eyewitnesses up to pursuit of criminal), which often are ended with success – detention of a person committed crime (6, p. 71-73).

One of the most important and effective form of the interaction of an investigator with operation officers is using by them information received in result of operational-searching activity of these officers. And this form of the interaction can be carried out as in initial stage of investigation so and in a process further investigation including under preparation and implementation of a separate investigative actions.

Very widespread form of interaction of an investigator and operation officers is a participation of the latter in the investigative actions performed by the investigator (art. 85.4.6 of the CPC). Necessity of such form of the interaction is explained with two factors causing double nature of participation of the inquiry's officers in investigative actions. First, it is very difficult and practically impossible to carry out many investigative actions being one (an investigator or inquiry's officer). To such

investigative actions are related: search, detention, presentation for identification, checking of the testimonies etc.

It is naturally, that necessity of a presence of the group of employees to carry out investigative actions does not predetermine a mandatory participation of the inquiry's officers in work of this group. But, taking into account a presence of the second factor (about which will be said below), the participation in the investigative actions are often taken just the operation officers.

The second factor causing necessity implementation of considered form of the interaction is an opportunity and practical expedience of fulfillment as in process of preparation so and at time of performance listed investigative actions, full complex of operational-searching measures. In spite of the fact that these measures are not constitute part of performed investigative actions, but largely make easy their preparation, do possible a choice the more suitable time and place, rational tactics their performance, and sometimes are allowed to control the results of their impact on accused or other person in respect of which is performed this investigation action, to obtain information allowing more objectively to evaluate the results of the investigation actions (1, p. 47).

Fulfillment of similar operational-searching measures is possible only under terms of active participation of the operation officers in the investigative actions made by the investigator.

Thus, considered form of the interaction is as practically necessity so and theoretically justified.

Somewhat differently is matter with the next and very widespread form of the interaction. We are talking about instruction of the investigator given to the inquiry's officers to produce independently separate investigative actions. This possibility of the instruction and obligation its execution for the police officers is directly foreseen in the legislation (art. 85.4.7 of the CPC). But, in our opinion, this contradicts above stated to the main principle of effective and fruitful interaction the bodies carrying out a combat to crime – execution of each of them their duties in inherent to them ways and methods. Any such instruction is inevitably caused with diversion of the

operation officers from performance their direct inherent duties – execution of the operational-searching measures to prevent and expose crimes.

Organizational interaction of an investigator and operation officer can be carried out in three types.

First, in type of coordinated daily work the investigator and operation officer, who are specialized at investigation and exposure of the one kind of crime. Under strict observance earlier indicated principles and presence of described conditions of providing efficiency, this type of interaction should be recognized the most preferable for daily activity of the inquiry body.

It is explained by the fact that organizing interaction such way, each of interacting parties is continuing the fulfillment of its functional duties being in normal working rhythm. Therefore, interaction on each specific case can be carried out practically unlimited time, and to be exact, up to completion preliminary investigation on it (1, p. 49).

Second type of organization of the interaction is its fulfillment in so named investigative-operational group that specially created for a work on specific case. Such groups are usually created on exposure and investigation of the criminal cases of the heightened labour input of the special grave crimes or the crimes causing increased public attention. The groups consist on one or few investigators and few operation officers. Practice is known cases creation of the groups consisting on dozens and even hundreds employees of different departmental and services. As rule, such group is headed by the prosecutor.

Organization of the interaction such way supposes giving up all participants of the investigative-operational group from fulfillment of other their functional duties and have negative impact on efficiency of the work as investigative so and operations bodies. We believe that such type of interaction should be applied only in case of extreme necessity when it is impossible to solve with other way a matter of exposure and investigation of specific case (7, p. 91-93).

In our opinion, the issues of creation of the investigative-operational groups are not proper lighted in the CPC. This is linked with presence of wrong, in our opinion, provisions about formation mixed investigative groups.

Thus, according to article 85.6.1 of the CPC, a chief of the investigative body has the right to charge a performance of preliminary investigation or separate procedural actions on criminal case to an investigator or to a group of the investigators. This is in case when criminal case is investigated by the investigators of one departmental.

The matter is complicated if during pre-trial production make clear investigative jurisdiction of a number of investigative bodies.

According to article 25.6 of the CPC, in this case on motivated decision of the Prosecutor General of Azerbaijan Republic or his deputies:

- on criminal cases, investigative body of the prosecutor's office and proper body of the executive authority – is created a jointed investigative group under the guidance of a prosecutor or an investigator of the prosecutor's office;

- on criminal case, investigative body of a few proper departments of the executive authority – in dependent on severity of crime from the investigators of these bodies is created a jointed investigated group and is determined a head of this group.

Organization of the investigative group and its activity take much time and to which it is necessary to add the time to familiarize with the materials of criminal case by the investigators.

It is possible to organize interaction between investigators and operation officers, but mandatory interaction between the operation officers of different services is impossible.

At last, the third type of organization of the interaction. This is so named constant active investigative-operational groups or teams. As rule, this group consists on one investigator, few operation officers, and an expert-criminalist. The functional duties of all participants are a work in this group. Such groups work only on limited range of the cases on serious crimes.

As for an issue about registration of the interaction an investigator and operation officer then it depends on specific form of interaction and type of its organization. So, participation of the operation officer in performance that or other investigative action

or its independent (on instruction of an investigator) execution is registered in a proper protocol of this action.

Jointed plan of the investigative actions and operational measure on specific case made up by the proper investigator and operation officer and approved with their chiefs can be the best document of their interaction.

In process of interaction each of parties carries out his functional duties in inherent methods: investigator carries out only procedural, investigative actions, and operation officer – operational-searching measures. Since their activity is directed to achieve one goal – establishing the truth, consequently, an essential importance has their optimal combination (1, p. 52).

Specific tasks decide through combination of the operational-searching measures and investigative actions can be divided into three types.

First, an obtaining of so named “strategic” information, with help of which is determined the direction of further investigation, is brought up versions. This information about essence of investigated event or a person committed it. In compliance with this information it is planned and carried out a complex of investigative actions and operational-searching measures.

Second, an obtaining so named “tactical” information through of which is chosen an optimal tactics of performance a separate investigative actions, is determined a place, time etc, sometimes – type of investigative actions. The operational-searching activity, as rule, is carried out after acceptance of a decision by the investigator about necessity implementation of investigative action, but before it performance. To provide qualitative fulfillment of an operational-searching measure it is important that operation officer heard about its necessity beforehand. Varieties of this are operational-searching measure for obtaining so named “evaluative” operativeness of investigative action.

It can be related to the third group so named “providing” or “accompanying” operational-searching measures in order to provide normal course of the investigative action.

Organizational combination of the operational-searching measures and investigative actions are provided as follows: familiarization of an investigator with

initial operational-searching information; acceptance of coordinated decision about its realization and optimal method; make up a jointed coordinated plan of the investigative actions and operational-searching measures; constant exchange with operational-searching and procedural information.

It seems that there are four stages of investigation, each of which is characteristic with certain features of such combination.

First, this is a period visit to a place of incident and work on “hot pursuit”. Traces should be considered “hot” until criminal is at the place of committing crime; it has traces of crime or items obtained by criminal way, and also as long as performed operational-searching measures and investigative actions give constant flood new operational-searching information about criminal.

Second it can be considered stage after completion of a work on “hot pursuit” up to exposure of person committed crime, i.e. until actual exposure of crime.

Main direction of the operational-searching measures in this period is obtaining information about who committed investigated crime.

It is planned and performed operational-searching measures as on instruction of an investigator so and initiative of the operation officer based, first of all, on brought up versions.

The more typical, especially at the beginning of this stage, are possible quick and wide orientation about crime of operations staff and its special apparatus. The firsts are orientated with especially sending reports-getting bearings, the seconds – on especially serious crimes – so named typical tasks (1, p. 54).

It is important to provide in these “getting bearings” and “tasks” minimum information allowing recognizing a criminal on the features, actions, presence of the items etc. but at the same time including deliberately false operational-searching information reiterating these “getting bearings”. Efficient way stimulating of receiving operational-searching information after distribution of the “getting bearings” and tasks is usage of the mass media causing active calls and creating a pretext to special department for “gossips”. Characteristic for this stage is a deep usage of opportunities of the operational-searching considerations; good results can give a personal criminal detection in the places of probable appearance of the

individuals similar not exposure criminal (ex. drug addicts, homosexuals etc.) or in probable places of sale of stolen.

All operational-searching measures on this stage have a searching nature.

Third stage – after exposure of suspected and up to brought him accusation and even an end of investigation – is required the closest interaction of the operation officer and investigator, coordination of the operational-searching measures and investigative actions.

If on previous stages under operational-searching measures prevailed the task obtaining “strategic” information then in this stage – “tactical” one.

At last, it should be selected in separate group the stage of initiation of criminal case through realization of a case of operational-searching considerations.

Analysis of implemented criminalistical recommendations of interaction and correlation them with the provisions of the CPC, is allowed to state about presence in criminal-procedural legislation contradictions, gaps and essential mistakes, negatively reflecting , and in some case, excluding usage of this method of combat to crime.

So, speaking about interaction on subjects, it is necessary to note (in our point of view) that absence in the CPC the norms determining legal status of a chief of investigative body and his deputy, exclude their real participation in interaction. R.T. Mansurov is right, noting that “... the rights that is authorized a chief of investigative body is not adequate of his duties that in actually makes of this participant of criminal process in administrative employee. Placing on the chief of the investigative body obligation to carry out control for timely acceptance by investigator necessary measures for exposure, investigation and preventing crime”, a lawmaker did not find time to establish legal mechanism of realization this function by him.

Not tenable the provision providing obligation of the chief of investigative body “to accept necessary organizational measures for detailed, complete and objective production of preliminary investigation on criminal cases”. And this is all that a chief of investigative body deprived the right to check materials of criminal case, to give an investigator mandatory for execution written instructions on production separate investigative actions or acceptance of necessary procedural decisions, personal to fulfill separate investigative actions or to take part in their performance, to withdraw

criminal case from production of one investigator and to pass it another” (5, p. 97-98).

Touching of an issue of participation in interaction of a prosecutor carrying out procedural management of preliminary investigation on a criminal case (art. 84.2.2 of the CPC) it is necessary to note that it contradicts to the provisions of article 216.3.2 of CPC, according to which “if during preliminary investigation is appeared necessity performance of separate investigative actions in other region, an investigator has the right to do the following actions:

...- in urgent cases to carry out these actions at the place of location of a suspected, accused or the most of witnesses with notification of a prosecutor carrying out procedural management of preliminary investigation in this region” (4, p. 78-79).

It appears a question: at what principle (on the criminal cases or on a territory) is carried out procedural management of preliminary investigation, and what principle in this case should be organized the interaction.

Speaking about interaction on the objects of activity it should note that its is impeded a pendency in the CPC the issues of rejection of operation officers, absence of notion and status of operation officer, incompleteness of the norm regulating an order of production of organizational measures and investigative actions.

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