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Investigative actions and organizational measures in criminal process and criminalistics

Abstract: The criminalistical recommendations on production of the investigative actions and organizational measures contradict to the provisions of criminal process, and the latter do not provide their effective use.

It is analyzed a correlation of criminalistical recommendations and provisions of the CPC during preparation and performance of an interrogation. It is given the proposals to amend of legislation.

Keywords: investigative actions; organizational measures; tactical expedient; interrogation; investigation; influence.

Article 7 of the CPC does not contain a notion of the investigative action, but article 134.2 is referred to such an inspection, examination, identification of an individual or subject, seizure, search, arrest on property; arrest of a postal, telegraph and other correspondence; tapping of telephone and other devices, messages, which are a family privacy, state, commercial or professional secret; exhumation of a corpse; interrogation, confrontation and checking of the testimonies at site; obtaining of the samples for examination or investigation; investigative experiment (26, p. 159).

The CPC does not also contain a notion of organizational actions, to which the criminalistics is referred procedural acts that directed on: regulating of an investigation process and its completion; observance and realization of the rights of participants of criminal process; make up procedural decision, which accepted by an investigator; expression of an assessment of the work result of a case (14, p. 11-14).

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Organizational actions are a form of an expression of the external management aspect of the investigator's activity, which is provided legality and efficiency of a process of collection, investigation, evaluation and using of the proofs for purpose of detailed and objective clarification of the circumstances of a case. A core of the organizational actions of an investigator in the process of crime investigation is to provide a realization of the investigation tasks and obtaining of the effective working results on a criminal case (11, p. 11-12).

There are a few classifications of the organizational actions of an investigator in criminalistics, which are based on application of various criteria: on a source of legal regulation, on an indication of their role in the process of proving, on subjects and others.

For our study a certain interest has a classification of the organizational actions on an indication of their role in process of proving, which includes itself the next: a) organizational measures, which determine the ways of obtaining of the proofs on a case in whole or in certain situations (for example, make up a plan of investigation); b) organizational actions providing indirect receiving of the evidences, i.e. obtaining the proofs with the subsequent actions (allocation of auditing; demand and obtain of the items and documents); c) organizational actions providing direct obtaining the proofs (measures on organization of a separate investigative action) and d) organizational measures, which are not directed on proving (arrest property; seizure of property and passing it on storage) (1, p. 12-14).

Above stated and made research and received results are allowed asserting that the most part of criminalistical recommendations on the production of enumerated investigative actions and organizational measures contradict to the provisions of criminal process, and the latter does not provide their effective using.

This is especially clear displayed on a sample of preparation and implementation of an interrogation.

As it known, an interrogation is an investigative and trial action, which has a result to obtaining by the investigative body or the court of the testimonies of an

interrogated person about the facts (that he/she knows), which are included in a subject of proving on criminal case*

Interrogations of a victim, witness, suspected, accused and expert are differed in dependence on the procedural situation of an interrogated person. In addition, in dependence on the age are distinguished the interrogation of an adult, minor and underage; on sequence – a primary and repeated interrogation, and on position accepted by an interrogated – the interrogation of an individual who gives the truth testimonies and the interrogation of a person who gives the obviously false testimonies.

It should especially distinguish the interrogations of a dumb, deaf, blind, or an individual suffering from other serious illness.

The purpose of interrogation is to obtain the truth testimonies, which are objectively reflected actual circumstances of a case. To do this, the interrogation has to be objective, detailed, full and planned, and this is provided with thorough preparation of it (13, p. 12-14).

From position of the criminalistics, the preparation to an interrogation consists on the following elements:

1. call for interrogation;
2. studying of the material of criminal case that received from operational-searching bodies;
3. studying a personality of an interrogated person;
4. studying of a special issues;
5. preparation of the place and material-technical supporting of interrogation;
6. make up of an interrogation plan (19, p. 428-430).

Made research and obtained results are allowed asserting that a number of criminalistical recommendations in part of preparation to the interrogation contradict to the provisions of criminal process, and the latter does not provide their effective using.

* We are considering only the issues of investigative interrogation.

Thus, according to article 226 of the CPC of Azerbaijan Republic, "... a witness, victim, suspected, accused and other persons are invited to an investigator through subpoena, which is passed by him in person, and in case of absence – to one of the adult members of a family, neighbours, and representatives of housing organization or place of work or study. They can be also invited with telegram, telephone message and fax.

... In a subpoena is indicated, who, in what procedural face are invited, and also where and when (day and time of presence) he/she should come to an investigator. There is a notification in a subpoena about that failure to come a person might be subjected to re-conduction ...

The persons, who are not reached an adulthood, are invited, as rule, through their legal representatives" (23, p. 245).

From the content of the article 95 of the CPC of Azerbaijan Republic comes that a witness is an individual who knows the circumstances having any significance on a case. Meanwhile, an individual invited to an investigator as a witness, after familiarization with the rights and obligations and notified about responsibility, during interrogation can say about full absence of any information having significance on the case. It appears a question: will it be rightful invitation of such persons as witness and giving them the status of witnesses before determination – whether they are those? (16, p. 50-51).

Studying of a personality of an interrogated individual during preparation to interrogation is carried out with purpose to establish a proper contact to him, clarification his interrelations with other participating in a case persons in order to choose the right tactics of interrogation. Studying of the personality is begun from acceptance by an investigator a decision about interrogation and continued during whole investigation action. Stated process conditionally might be divided in two stages:

1. studying of a personality before interrogation;
2. studying of a personality in process of an interrogation.

Studying of a personality before interrogation is carried out by the detailed analysis of the documents of a case, gathering of information about this person on residential place, office, educational institution, studying of archival files, card-indexes of criminal registration etc. (12, p. 27-31).

A number of criminalists recommend studying of information on personality of accused, presenting by itself a separate research. So, P.P. Tsvetkov stated that studying of a personality of an accused should be thorough: information of personal description, criminal and legal signs, world view, mental features, behaviour etc. (28, p. 76-80).

Naturally, it is difficult in similar manner to be prepared to each interrogation since this is connected with a big spending of efforts, funds and time. Therefore, the main way to study a personality before interrogation is an analysis of his biographical particulars, obtained upon filling of an introductory part of the interrogation protocol.

According to article 230 of the CPC of Azerbaijan Republic, in the introductory part of a protocol is indicated his name, surname, date and place of birth, citizenship, education, place of work, position and duties, place of actual residing and registration, information about interrelations with suspected, accused and victim, it is made the notes about explanation of the rights, obligations, responsibility and particularities of implementation of interrogation.

In addition, in the interrogations protocols of suspected or accused persons (art. 234 of the CPC of Azerbaijan Republic) are indicated a presence at them "... previous conviction, state awards and other information characterizing of a suspected or accused individual and having significance for a case".

It seems that an introductory part of the interrogation protocol of a witness should be supplemented with issues about his/her nationality, previous conviction, family status, presence of the dependants, state awards and scientific degree, ID, state of the health etc., which will be conducive to the rapid establishing of psychological contact with him/her (12, p. 27-31).

According to article 228.4 of the CPC of Azerbaijan Republic, a witness not reached the age of 16 at the beginning of interrogation "... is explained only his duty

to speak the truth, but he is not notified about criminal responsibility for refusal giving testimonies, evasion or giving obvious false testimonies”.

This provision of the CPC is presented not right since the duty of a minor to speak the truth as such does not exist.

Based on the provisions of theory of information, an interrogation might be imitated as procedural form of conversation, the content of which is to obtain information having attitude to investigated case. In result of the conversation between an investigator, inquirer, prosecutor and the court from one side and a witness, victim, suspected from other side, is occurred a process of passing and perception of information from a talker to listener (15, p. 7-11).

Information of an investigator should be planned at feedback that allows following for how the questions are perceived by an interrogated person, how they are influenced on him. Without consideration information receiving through the feedback, a man would be in full deprived of opportunity correctly to be orientated at all manifestations of his behaviour, and in the system of social relations in whole. The feedback allows to a man doing timely and necessary additions in his position and structure of actions. Passing information to an interrogated person, an investigator affects on his volitional decisions, asks him for mental tasks, and directs his thought. If a goal of information passing in general is to enrich with new knowledge of other man, then the investigator has another purpose – to establish psychological contact, stimulate a mental activity of an interrogated person, obtain objective information from him, and assist him to remember forgotten (22, p. 5-7).

Psychological contact in the investigative practice is a special interrelation of an investigator with participants of criminal process, which is characterized with desire of the investigator to keep a conversation in order to obtain the truthful, detailed and reliable testimonies having attitude to a case (21, p. 14-15).

A core of the contact during interrogation is determined with particularity of the psychological relations, which are appeared between an investigator and accused individual, and is provided with the correctly chosen tactics by the investigator. It is based on studying of individual particularities of a personality of

the interrogated individual, the materials of criminal case, and also communicative abilities of the investigator to induce of the accused to be interested in the conversation. The investigator tries to eliminate a conflict from communication and to establish with interrogated stable contact, to create a favourable atmosphere of interrogation (24, p. 16-17).

The investigator is needed constantly to convince the individuals-participants of a case in necessity to give the truthful testimonies, to refuse from chosen wrong line of behaviour; and from that as far as he possesses with the means of influence, depends on fulfillment the tasks of court proceedings. Psychic influence on a person might be excluded from the means, which are applied during investigation of the crimes (22, p. 39).

During performance of the criminal-procedural activity, participants have an appropriate impact on each other, which is objective regularity. Therefore, in order to protect of an interrogated from instilling, the law bans to ask the leading questions in order not to let external influence on an interrogated person. The law orders performance of the interrogation in separately (art. 227.3 of the CPC); production of the confrontation is simultaneously allowed only between two individuals (art. 235.1 of the CPC). But, even the accuracy fulfillment of the all rules of an interrogation performance does not guarantee of the interrogated person from psychological influence from the investigator side. Any type of conversation is supposed influence. Furthermore, even neutral presence of two persons is influence of the one to other (25, p. 84-91).

For fulfillment of the tasks that appear during investigation, an investigator has the right and is obliged to influence on the persons participating in a case. He needs to convince of an accused in necessity to give the truthful testimonies, to refuse from chosen wrong line of behaviour. In this is concluded permitted with the law psychic influence on an interrogated, which is subordinated to the purposes of establishing the truth on a case. It is important to determine accuracy the boarder between actions and techniques of the investigator, which are allowed by the law and the actions, which are psychological violence. If psychological influence on a personality is linked with coercion

then such influence in criminal process is considered to be inadmissible. Psychological influence on accused should be concluded in creation of the more favourable conditions for psychical process and manifestation of the positive psychical features of a personality, in creation for an interrogated the situation, which are allowed receiving from him the truthful testimonies.

We are not talking about that whether legally application of psychic impact, and about inadmissibility of the psychical violence. In psychology, under effect is to be considered a certain influence directed on education to a personality of the skills, abilities, knowledge, finally, a philosophy of life in whole. An effect of the investigator on an accused has the more concrete task - obtaining of the truthful testimonies (7, p.21-27).

Forensic-psychological effect as a certain combination of the methods are applied for changing of a psychic state of an interrogated, total duration of the mental process, with purpose to control of a person's thought, change his strong-willed attitude to the facts, which investigation has. Psychological effect applied by the investigator is directed to transformation, reeducation of the offenders, education of all participants of the criminal process (3, p. 21-26).

Development of the methods of psychological impact during interrogation is the theoretical basis for the next development of the tactical techniques; and the latter is practical realization of the impact methods. Criminalistics develops the techniques and methods, which are allowed avoiding an inspiring effect of an investigator over interrogated person, to avoid distortion of the truth (4, p. 11-12).

In the process of investigation, the methods of psychical impact are used in certain procedural frames and forms, realized in limited times and, as rule, they are applied in combination. Concentration of a few methods is strengthened an influence of the impact. In each separate course, the impact is applied with considering of psychical features of a personality (5, p. 88-92).

The choice of a specific tactical technique is determined with the circumstances of interrogation: by conditions, in which it is carried out, stage and situation of it. For example, in preparatory stage of interrogation the tactical techniques are applied for

clarification of a personality of interrogated individual, establishing psychological contact to him, determination of his attitude to the subject of an interrogation and to the participants of a case, and finally, to a choice of the tactics whole interrogation (8, p. 26-28). In stage of a free account the tactical combinations are used to obtain full and objective testimonies. Here, it widely is applied the techniques, the content of which are a reminder, detailing and clarification (9, p. 21-24). In a stage of the formulation of the questions, the tactical techniques are used in dependence on whether conflict or non-conflict nature has an interrogation. If the interrogation has a non-conflict nature then the tactical techniques are directed on receiving new proving facts, assisting to an interrogated person in restoring in memory of the facts forgotten. Tactics of the detailed interrogation, tactical techniques, which are built on associations with adjoining and contrast (10, p. 30-33). If an interrogation has a conflict nature then in dependence on what proofs are possessed of an investigator, tactical techniques can be classified on three variants: 1. on presence of the proofs, which are fully detected of an interrogated person; 2. under their insufficiency and 3. on presence of suspicious that based only indirect evidences (20, p. 36-38).

On presence of the first variant it should be stimulated all positive personal features of the interrogated, not desiring to give the truthful testimonies, logically correct and tactically skillfully be presented the proofs. If it is not sufficient of the proofs to prove a direct guilt then are used the techniques, which are formed a conviction of the interrogated person in an inevitability of proving his guilt (27, p. 114-115). Here, it is rightful using such technique as leaving of an interrogated in nothing know about volume of the evidences, which investigator possesses. The technique finds the more successful application under interrogation of an accused or suspected when crime is committed by a group (6, p. 14-16). If to the time of interrogation an investigator possesses with certificate of conviction of interrogated person, and the latter hides it, an investigator should show his well-informed. Whole interrogation should be performed professionally competently. It is enough uncertain tone, uneasy view, light emotion of an investigator, increased interest to about what

an interrogated person speaks in order the latter would understand that the investigator does not possess necessary evidences (22, p. 62).

The repeated interrogation as a tactical technique is implemented as soon as will be gathered any new proofs. It is senselessly to produce the repeated interrogation with the same proving arguments as the first one (18, p. 76-80).

In the final stage is applied the tactical techniques (formulation of the control and clarifying questions), which help to more full and objective note of the testimonies of an interrogated individual (17, p. 72-78).

These are criminalistical recommendations, and according to article 15 of the CPC of Azerbaijan Republic, during production of the interrogation are prohibited to put the tortures, use physical and psychical violence including medications, expose starvation, hypnosis, deprive of care, and use other cruel, inhuman or degrading treatment, to obtain the testimonies with way of violence, threatens, deception and using other illegal actions, violating the rights of interrogated individuals.

With our point of view, a notion of physical psychical violence and deception are subject to correctness since they are not right interpreted in the CPC.

Article 226 of the CPC “An order to call to interrogation” reads that “... is noted a notification that in case failure to come a person can be subjected to compulsory process that provided by the article 178 of the CPC”.

Meanwhile, according to article 178 of the CPC, compulsory process might be applied only the following:

- if a person without good reason does not come to calls;
- if an individual evades receiving a call;
- if a person does not have permanent residence.

Consequently, failure to come is not a ground for compulsory process, about which should be appropriate clarifications in the summons. In additions, the compulsory process of a person who does not have a permanent residence is not right and contradicts to the provisions of the Constitution.

According to article 227.5 of the CPC, "... interrogation is begun with suggestion to a witness to say all circumstances that are known him on a case and after that he will be asked the questions" (23, p. 246).

Such procedure is to be wrong since in dependence on number of circumstances in some cases the interrogation should begin with asking a question; in addition, in the most cases the witnesses want to be asked a concrete question.

During investigation of a criminal case No.0294 about theft of the products from commercial shop in settlement Gedezeyhur of Gusar District by Hajiverdiyev, Babayev, Asadov and others, an investigator offered to witness Gadiyev to say everything he had known in respect of circumstances of the incident, gave him papers and continued doing his business. One hour later, he had interested in the content of what the witness was writing in a protocol of interrogation he saw that written thirty five sheets contained detailed description of the circumstances of fight between Babayev and his brother in the wedding party that occurred three years ago (2).

The separate provisions of the articles 228 and 229 of the CPC contradict to article 95.2.1 of the CPC, which reads that "it might not be called and interrogated as the witnesses the persons, which due to age (minors), physical or psychical problems unable to rightly perceive and reproduce the circumstances, which are subjected to be clarified under criminal prosecution".

The protocol of interrogation of a witness (art. 230 of the CPC) has to contain information about nationality, conviction, family status and others that it necessary to determine the interrogation tactics.

Ignorant witness is those who unable to read and write. In this case, the provisions of the article 230.7 of the CPC (according to which an investigator notarizes his testimonies with signature) do not have any significance for establishing the truth, observance of legality and objectivity.

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