

**Correlation of the provisions of criminal process  
and criminalistics under production of interrogation**

**Abstract:** It is considered correlation of the provisions of criminal process and criminalistics under production of interrogation.

Subject of interrogation, its content, correlation with a subject of testimonies is studied.

It is analyzed informational aspect of interrogation; the author's definition of a notion of interrogation is given.

It is determined the gaps of procedural law, suggestions to eliminate them are given.

**Keywords:** criminal process; criminalistics; interrogation; witness; information; reflection; minor; tactics; psychology of interrogation; correlation.

As way of receiving of information, an interrogation has cognitive significance as during investigation an investigator receives not only information about crime and its circumstances, but also he uses the results of interrogation to establish new facts, checks and estimates them, brings up new versions.

Criminal procedure law determines the norms, which regulate the subpoena to appear as a witness for interrogation, sequence of interrogation, an interrogation of minors, dumb, deaf, blind persons, and the individuals suffering from other serious illnesses as the witnesses (art. 226-229 of the CPC). At the same time, the norms of the CPC provide a list of actions for investigator, which is preceded to interrogation process. These are provided by the article 227 of the CPC and included the following: determination of personality of a witness, explanation his rights and notification

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about his obligations to tell everything he knows as to the case, and also his responsibility for failure to give evidence, evasion to give testimonies or for providing of deliberately false evidence, establishing of the relations between witness, suspected, accused person and victim etc. [6, p. 226].

The subject of interrogation includes the circumstances, which are subject to be established during investigation, and it is determined by the two factors: with list of circumstances, which are subject to clarify and information, which should be known or might be known to the individuals who have an attitude to a crime. Article 227 of the CPC stipulates in general the subject of interrogation as follows: a witness can be questioned about any circumstances, which concerns to the case, and also about personality of suspected, accused person, victim and other witnesses. Such general instruction is concretized and supplemented with that the circumstances, concerning to crime, are the subject of interrogation into a preliminary investigation. These are the next: the facts, which prove guilty or defend of an accused person; consequences of criminal action; circumstances conducting to crime committing.

It should be noted that a subject of interrogation does not remain unchangeable on preliminary investigation. The subject of interrogation is concretized in dependence on who is questioned; some circumstances might not be confirmed, another ones are turned out to be clarified in full. This is caused with real information (which is known to interrogated person), course of investigation, and proofs that are presented in the case. So, if a witness gives detailed and accurate testimonies then a subject of interrogation would be limited by the first questions of common nature. In course of a witness denies the facts established, and then the circumstances working out in details are become by a subject of interrogation.

The subject of interrogation includes also clarification of the circumstances, which are assisted to checking of the testimonies received in process of interrogation or after its completion, and also to checking of other proofs on a case. So, trying to clarify a fact an investigator analyses the evidence, which have an attitude to a case; in course of interrogation he compares information received with those he have had. In connection with this he puts questions, which are directed to checking of

circumstance clarified. Subject of interrogation finds a concrete manifestation in the plan of interrogation that includes a list of circumstances, which are subjected to be ascertained. Regardless of brevity or detailed, verbal or written nature, the plan of interrogation conducive to systematization of evidential material, and consequently, to purposefulness of interrogation; it quite certainly outlines the subject, and sometimes limits the frames of interrogation, ex. when the plan is working out in details.

It should be taking into account that a subject of interrogation does not coincide with the subject of witnesses' testimonies. If a subject of testimonies is the facts that are known to witnesses in regarding to crime then a subject of interrogation is wider complex of the circumstances that are subjected to be ascertained in connection with crime investigation. This is taken into consideration by an investigator when interrogation plan making up. Together with circumstances that are subjected to clarification in respect the case an investigator includes in the plan the circumstances, which might be known or should be known to the interrogated individuals.

In informational aspect the interrogation, as a specific form of communication between investigator and questioned person, is one of the main investigative actions when sources of information are searched. Evidential significance of information, which received in process of interrogation and production other investigative actions, is determined by: its correspondence to objective reality and relevancy to investigated case; observance of procedural form of information receiving that provided by the law [3, p. 17-19].

Information, which is transmitted during interrogation from one person to another one, is distorted partially (in the details). Losses of information are increased when a multistage transmission is. The losses of information in witness' testimonies may happen due to wrong perception of a witness, his inability to reproduce information (event) perceived, wrong interpretation a witness' testimonies by an investigator, inaccuracy in record notes, and also misunderstanding of interrogation protocol by the judges. We cannot put an equality sign between information volume of the fact, its mental model and declaration of a witness about the fact. This is an

indicator of well-known incompliance between the subjects' quality, senses and our perceptions. Here, it is important to establish, as far as information on "exit" accurately reflects the reality, i.e. as far as exactly it included, transformed and reported by interrogated person, perceived and inserted by investigator in case record. These inevitable losses of information during investigation (interrogation) may be compensated for receiving other information from new sources and reduction of multistage in transmission of information. Therefore, a principle of immediacy, obtaining information from the first person (an eyewitness of crime) and usage of the direct evidence has a specific significance. An investigator does not receive information if it is not concerned to the case or he has had it already. The reliability of information only increases in the second course [4, p. 76-79].

Provisions of the information theory say that information may not be increased when passing through the channel of communication. As rule, at the entrance a source has more volume information than a receiver. Consequently, investigator does not receive whole information that interrogated person possesses, i.e. some part of information is remained as unclaimed [4, p. 80].

Information of testimonies has verbal, written form and also language signs and gestures of a deaf-and-dumb individual. Moreover, the verbal form is the most important communication means between people, the means of information transmission and psychological impact. This circumstance determines interrogation as action that has much informational ability among other means of proving. It should be considered that information is not only the words said by questioned person, but also his voice, mimicry, tone of voice, appearance and manners.

Consequently, according to considered provisions of information theory, interrogation may be presented as a procedural form of communication, the main goal which is to receive information in respect of investigated case. Communication between investigator and interrogated person may be divided into four stages: 1) reclamation of information from interrogated individual; 2) transmission of information by interrogated to investigator; 3) comprehension of information received by investigator; 4) fixation of information.

The typical form of interrogation is mutual process information transmission from investigator to interrogated person and vice versa. Investigator sets a task to interrogated individual and receives his information. The latter gives back information as testimonies.

But, it is necessary to take into account that information outgoing from investigator should be designed on feedback that allows him observing how the questions are perceived by interrogated person and how they impact onto him. Without consideration of the feedback a man would be deprived a whole an opportunity to be versed correct in all manifestations of his behavior, in system of social relations. The feedback allows a man making timely and necessary corrections in his position and structure of actions. Transmitting information to interrogated person, investigator impacts on his volitional decision, puts in front of him mental tasks, directs his thought. If in general a goal of information transmission is to enrich with new knowledge other man but an investigator has other goal – to stimulate mental activity of person questioned, rebuild of it, receive information that corresponds of objective reality, assist in remembering and reproducing of information forgotten, search of new sources of information.

At the same time, it is not sufficient to have only the feedback for the interrogation, which is based on conflict nature. Investigator and interrogated individual are trying to guess the thoughts of each other, the same as when play chess. The more “moves” will be guessed the more skillful will be interrogation [5, p. 60-62].

In psychology science, thought associated with imitation of ideas and actions of an enemy and analysis of own arguments and conclusions is called reflection, and a process of the grounds transmission in order to make decisions by one of the rivals to other one – a reflexive control [1, p. 11]. Information, which is transmitted by an investigator under the reflexive control, stimulates desirable actions of an interrogated. Reflexive approach to the analysis of conflict situation allows foreseeing to an investigator what testimonies may give an interrogated and same time to regulate his actions. Investigator should have the fuller ideas about mental

platform of actions of interrogated individual and the possible ways of its development. In order to direct thinking process of an interrogated person, information, which would be a basis to make a certain decision, should be sent him. This will help to understand his motives and find explanations of his position.

Theory of the reflexive games allows carrying out a tactical and psychological fight when an investigator is needed to foresee a course of mental processes of questioned individual. Here, we are watching actually as if a split personality of an investigator: one of them is a real who interrogates an individual and other one, who is formed in mind of interrogated person. Reflexive thinking allows knowing and analyzing a subjective nature and logical base of the actions of individuals, who saw crime. At the same time, it allows to determine more optimal way of disclosure and investigation of crime. An idea about controllability of the investigative process led to necessity for developing of scientific methods, which would allow: from point of reflexive games - to prevent and win a rival (interrogated person), and from point of investigation of operations – to choose a new tactics, which would be more reasonable in spite of even on unfavorable action of a rival [1, p. 16-18].

Transmission of information under reflection could be called inversely-returnable and presented schematically by this way: from investigator towards interrogated person, from interrogated to investigator, and from investigator again to interrogated person in form of new mental task. Course of ideas may be expressed with the next words: a) under the direct transmission: “I know that interrogated individual gives trustful testimonies”, b) under transmission back: “I know (I guess) what interrogated person thinks of me”, c) under inversely-returnable transmission: “I know (I guess) that interrogated person thinks as if I think ...”. Under inversely-returnable transmission of information each of the participants of interrogation considers himself, an event at present moment and receiving information not only from own point of view, but also from point of view of his rival. Successful conducting of interrogation depends on the level of information of an investigator about interrogated individual, his ability to imitate a course of the thoughts and to forecast actions of interrogated person, foresee course and results of interrogation.

Consequently, a core of the interrogation is to receive the testimonies from interrogated person using the methods, which were developed by criminalistical tactics on the basis of investigative and judicial practice. Resuming above stated, we may do a conclusion that interrogation is investigative and judicial action; the goal of which is to receive information by an investigative body or the court about the facts that have a significance for right investigation of criminal case [2, p. 11].

All sufficient features of interrogation are indicated in this definition. First, interrogation is considered as investigative and judicial action. Thereby, it is emphasized active role a person conducting questioning. Second, interrogation is a process of information receiving (claiming). Third, the definition indicates that the action carries out with an investigative body or a court in frame of specific procedural form. Forth, it is taken attention that not everything an interrogated person possesses is a subject of interrogation. The subject of interrogation is information, which interrogated individual has in respect of the facts that are concerned the criminal case investigated [3, p. 62].

From the point of view of criminal process and criminalistics an interrogation is a process of evidence receiving, and from the point of view of forensic psychology – a process of specific communication between investigator and an individual questioned. Interrogation is the process of information receiving that has significance for a case. It can be considered as a social phenomenon, which has ethic and educational aspects. Actual reflection all aspects of investigative action from various positions is a common for these definitions.

Interrogation consists on the next stages: listening testimonies in form of topic of a witness and responses of interrogated person on asking questions; procedural registration of a course and results of interrogation etc. Successful decision of the stated above tasks is determined by thoroughness preparation of investigator to interrogation.

Abovementioned principles characterize interrogation in criminalistical and informational aspects, which do not always correspond to the criminal procedure

norms. In addition, some provisions of the CPC in part of interrogation of the witnesses are contradictory that excludes their proper application.

So, according to article 227 of the CPC, interrogation is begun from suggestion to a witness to tell about all circumstances that he knows as to a case, after that he can be asked the questions. It seems that the law in this part should be supplemented by the provision about a ban to ask probing questions to a witness. Inadmissibility of this was proven by the criminalistics.

According to article 228 of the CPC, if a minor witness may in verbal or other form provide information that has significance for a case, he can be questioned independently his age. We believe that this provision contradicts to article 95 of the CPC, according to which it may not be summoned and questioned as witnesses the minors and individuals who due to physical or psychic deficiencies unable correct to perceive and reproduce the circumstances having significance for a criminal case. The article 126 of the CPC says the same: information received from the persons may not be used as evidence if they are not subjected to interrogation as witnesses.

The article 229 of the CPC stipulates interrogation of a witness suffering from psychic or other serious illness. Interrogation of a witness suffering from psychic or other serious illness carries out with permission of a doctor and in his presence (art. 229.2 of the CPC), and during questioning of dumb, deaf, blind person or a witness suffering from other serious illness may be participated his legal representative and representative (art. 229.3 of the CPC).

It seems that the notions should determine general order of interrogation.

On unknown reasons from a record of interrogation of a witness are excluded the columns on nationality and previous convictions, which have significance for establishing of psychological contact with interrogated person. This is important as an investigator may receive the personal data of a witness only during filling out a worksheet part of interrogation record, as according to article 227.1 of the CPC an investigator may not interrogate a witness about his personality.



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