

Theoretical basics for application of special psychological knowledge in pre-trial criminal proceedings

Abstract: The concepts “cognition” and “knowledge”, their correlation, psychological contents are considered.

It is studied a subject and object of forensic psychology, correlation of psychology and practical application of special psychological knowledge in criminal process.

The methods of forensic psychology, their genesis in Canada, USA, Germany and other countries are analyzed.

Keywords: psychological knowledge; psychological cognition; criminal proceedings; method; mentality.

Psychical activity of man, who is linked with proceedings or involved in it, has particularities, nature of which is predetermined with fulfillment of numerous different social and legal functions. As result, an emergence of new science originating from the general psychology, which researches behaviours of man’s mentality that showing up in legal psychology.

Being a cognition form, each science possesses with regularities, specific character and theoretical significance of which are raised a knowledge system up to independence level.

Analysis of cognition interpretations in the sciences of criminal process (we are using the concepts “criminal process” and “criminal proceedings” as synonymies), criminalistics, forensic psychology from one hand and in philosophy – with other one let us determine a cognition in criminal process like process reflecting of objective

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reality. It is become onto three levels: philosophical, scientific and common ones. Depending on stage of criminal process, level of legislative regulation, procedural reasonability, cognition may have an evidential or subordinate character. But in all events, it will be procedural as it has no sense out of purposes of criminal proceedings. These general provisions are equally related to the special psychological cognition.

According to M.V. Kostitsky, under psychological cognition in criminal process should be understood a process of purposeful reflection of objective manifestations of man's state of mind or his psychological behaviour, activity carrying out by psychologist. This is a specific cognition that is associated with cognitive activity of experienced psychologist. This is a professional type of cognition, which include three types of it: philosophical, scientific and common ones [15, p. 75].

Psychological knowledge is distinguished from psychological cognition. It is a system of information on regularities of origin and development of psychics, on mental manifestations, processes, states, on communication and behaviour, activity of man. Using in criminal process the psychological knowledge is a dynamic but not completed system. Some or common facts or events that are interested inquiry office, investigative body, prosecutor, court and defence party are cognized with help of it. We may say that in frame of criminal case is established new knowledge about person, crime, cognitive and impaired memory ability and others particularities of participant of process submitted to psychological examination. At the same time, using of special psychological knowledge on specific criminal case minimally increases the knowledge on level of psychology (as science). Mentioned circumstance is an objective contradiction in the process of psychological cognition [15, p. 76].

G.D. Belikov says that psychological knowledge developed and received by psychological science is become an instrument of fulfillment of proceedings tasks only when it is applied in practical purposes of investigation and court examination of criminal cases, for cognition of some criminal legal and procedural events and facts.

Using of special psychological knowledge is fulfilled through drawing to process a psychologist who uses as psychological so scientific and philosophical knowledge [4, p. 226]. I.A. Buzhanidze points out on possibility cognition in criminal process the circumstances, which have psychological nature, under which is understood sufficiently non-pathological manifestation of mental of an accused, suspected, victim and witness to resolve criminal case in right way [5, p. 51].

Separation circumstances in criminal process, which have psychological nature, are admissible. But, they might be cognized as by psychologist so by jurist; like a special psychological cognition allows establishing and researching as psychological occurrence and facts so and adjoining with them legal, social, psycho-pathological and others. As justly M.V. Kostitsky notes, this process is objective and inevitable. It is caused with impossibility full separation of occurrences and factors of objective reality in compliance with subjects of some sciences, on basis of which are carried out a cognition in criminal process. From other side, here it is also revealed a process of integration-differentiation of scientific and practical knowledge. Other matter, in compliance with applied special psychological knowledge, final document, conclusions, advices, recommendations, which are contained in it, can be out frames of psychological science [15, p. 77].

In opinion of G.S. Abaydulin and R.G. Abaydulina, using of special psychological knowledge in criminal process is inseparably linked with common psychology and applied branches of psychological science. They are a basis for development of psychological expertise and other forms of special knowledge, peculiar “cultural medium”. Presence of double-sided link for application of special psychological knowledge as peculiar psychological practice with psychology presupposes a mutual enrichment of the both sphere, their improvement [1, p. 16-17].

Subject of psychology has expanded for the period of its development – from cognition of some regularities of mental activity of an individual up to exposure of the regularities of making up of personality, role of social environment in mental development, social and psychological phenomena. It is expanded and complicated a subject of applied branches of psychological science as traditional so new ones.

Changes of possibilities of the method for expert psychological assessments, subject of psychological expertise, consultations, and involving of specialist-psychologist are caused with this.

Psychological science acts as specific sphere of activity directed to cognition of objective law of society and thinking development. According to M.V. Kostitsky, psychological science has by its object that part of reality, which is in interaction with a subject of cognition; division of cognition object is carried out with help of the forms of practical and cognitive activity, which is worked out by society and reflecting features of objective reality. Adequate reproduction of an object in thinking presupposes transformation of initial information of cognition, and ideal recreation of object acts as result of application by a subject the certain ways of cognitive activity, logical operations. Knowledge, worked out by a subject of cognition, is always correlated with an object, checked through material and practical activity [15, p. 78-79].

M.V. Kostitsky points out that mentality (being a feature of highly organized matter, specific form of reflection of an objective reality by a subject) is an object of psychological science. Events of the past, present and future are presented and ordered in psyche. Mentality of a man has conscious and non-conscious character. It appears at certain stage of biological evolution and is presented by itself as necessary condition for further development. Owing to active and advanced reflection of external objects by special organs of senses and brain in form of psyche, it is become possible to fulfill active actions that adequate to the features of these objects. Being changed and complicated, man's mentality receives qualitatively new form – form of cognition, which is generated by social life of a man, social relations.

The facts, regularities and mechanisms of mentality are the subject of psychology. The first group – facts of psychic life – is studied in process of investigation of environment perception by a man, when despite changing terms of perception a percept of subject keeps relatively constancy [15, p. 79-80].

Psychological science is not limited by description of psychological facts, it presupposes crossover from description of the facts to their explanation, disclosure of

the laws, in compliance with which these facts are presented. But, knowledge of the regularities does not ever discover specific mechanisms, owing to which these regularities are manifested.

Interconnection psychology and practical application of special psychological knowledge in criminal process determines that mentality is also an object of such activity, and mental phenomena, regularities and mechanisms are the subject one. Thus, object and subject of psychology and object and subject of theory of using special psychological knowledge in criminal process are coincided [2, p. 71].

A.S. Barinov justly notes that development of the theory of using special psychological knowledge in frame of common psychology stimulates development of the theory and practice of psychology of special using in specific applied branches of psychological science. Object and subject of psychological expertise, consultations of specialist in specific branch will be specified general object and subject of this expertise, consultation. On other hand, object and subject of application special psychological knowledge in specific branch will be connected with object and subject of this branch of psychology [3, p. 12-13].

Methods of regularities, studying in any science, determine its development and level of results received. History of psychology abounds with search of researching methods, which were often characterized by narrowness and subjectivity. Appearance of dialectics of psychological research allowed reaching the results, which had explained processes and phenomena of human mentality from the materialistic positions.

S.I. Vostrikov justly points out that dialectical method of cognition acts as general method of cognition, and all provisions of the method are interpreted in any science in compliance with subject specificity. Using of the latter as general method of cognition presupposes also availability of the methods, inherent each science, in which is shown general method. Here, correlation of the general and particular is become apparent in fact that the general (dialectical method) is interpreted in the particular methods of specific science in compliance with its particularities and tasks. The methods of each science are the particular methods of cognition. They allow

researching a system of the regularities, which is formed its subject [6, p. 21]. Thus, the dialectical method is the general method of legal psychology, and the methods for researching of mental phenomena are the particular ones. They are directed to studying in the details of psychological structure of human activity in legal sphere.

The particular methods are mainly developed at the next directions. First, methods received from common psychology and fulfilling the cognitive functions as in common so and legal psychology. They include: a) psychological methods of personality studying; b) methods of impact in personality; c) methods of checking of psychological features of personality. These methods are various and are used in compliance with purposes set. Second, the methods, which are provided cognition only in legal psychology and forming correspondingly their tasks or transforming from the methods of common psychology relating to purposes of legal ones.

A.A. Gorin notes that essence of observation method consists in systematical and planned studying of mental phenomena through perception by researcher external manifestations of mentality in process of application of the law. Observation presupposes worked out in advance program, subordinated to certain aim and it should be carried out without using any experiment elements in various situations in respect of one person or a group of men. Method of observation, which is fulfilled in scientific purposes, may be used successfully in judicial and investigative activity. In particular, practical aspect of the observation method is widely shown during production of some procedural actions, where registration of mental phenomena is often the basis to apply or change the tactical methods, understanding of psychological and tactical position of a person producing investigation etc. [9, p. 31-32].

According to A.I. Zolotov and I.M. Shmelev, an experimental method is subdivided into natural and laboratorial experiments. At time of organization of the natural experiment tested persons do not know about its producing and conditions. They perceive an experiment as real event, the participants of which they are. In purpose of regularities research, which are manifested in judicial investigative activity, such experiment is not often produced, as legal regime of activity and duty

to observe the rights of personality makes this experiment unacceptable. Laboratorial experiment is widely applied in common psychology and in limited numbers of cases in legal one. This is explained by the fact that studying of mental features of a person in process of proceedings excludes experimentation, except examinations producing in process of forensic psychological expertise. Consequently, material that necessary for scientific conclusions might be collected with help of other methods, mainly through generalization of judicial and investigative practice [11, p. 66-67].

Scientists (I.M. Gazelin, A.T. Gilman and others) point out possibility using in scientific purposes so named forming experiment laying in research of mental phenomena during professional preparation and studying through resolution of complex of the tasks in order to establish and form professionally important features of personality [7, p. 31; 8, p. 21-22].

Theoretical studying of I.F. Zosintsev and I.G. Kraynov note possibility producing emotional experiment, the goal of which is to observe reaction of a face caused by bringing or saying of certain stimulant. Such experiment is used in order to make clear attitude a person to investigated event or established fact [12, p. 100-102].

In our view, production of such experiments contradicts ethical requirements of judicial investigative activity and due to this they cannot be recommended for receiving certain information.

Method of tests, through of which is defined a level of intellectual development, professional fitness, reaction at various stimulants etc., is a subtype of experimental method. Testing is widely applied during determination of a man's state, his reactions and in this aspect is created certain preconditions to forecast a behavior of an individual in different situations, including extreme ones. According to T. Meyers and L. Cogan, the method of testing might be used in investigations of judicial and investigative activity, in particular for working out the optimal recommendations on decision of thinking tasks linked with bringing of investigative and judicial versions under limited character of evidential information. Such kind of investigations show as level of professional preparation as a basis for its subsequent optimization, but so create preconditions for changing of character and methodic teaching of persons,

which activity is connected with decision of similar thinking tasks [17, p. 91-92]. In practice, using of the testing methods is admissible only in frame judicial psychological expertise.

It is existed a method of conversation in common psychology, which is used to receive diversified information about personality through direct talking to him. It is presupposed drawing up a list of questions, clarified in process of its application. Under this, it is important to create such situation, which is served to informal statement about number circumstances, including the moments, characterizing a personality in all manifestations. The method of conversation presupposes receiving of interested information by investigator through free talking and answering in questions, character of which is defined by the goal of talking. For example, the questions are concerned to his attitude to events, facts, circumstances not relating direct area of person's interests. During production of talking an investigator follows for reaction of the person, registering their character and correspondence with stated position [18, p. 76-80].

Biographical method, consisting in collection and analysis of information his biography, which gives imagination about mental particulars of the person, is certain supplement to the method of conversation. This information can be contained in different kinds of documents – letters, diaries, archive materials, documents that received from educational and medical institutions, enterprises, where he had been worked. According to I.S. Prikhodko, careful studying of these materials allows presupposing how this individual is grown, what living conditions (family, school, circle of friends) impacted in formation his interests and manners [19, p. 61]. Under this , we should take into account a dynamic of personality formation, changes his psychological structure caused with age, social status and others. Using of some aspects of biographical method in judicial investigative practice is assisted a collection of criminalistical significance information.

Method of independent characteristics has similar nature, the goal of which is to receive criminalistical significance information from difference sources. Independent characteristics give detailed material, which allows working out fuller ideas about

personality in respect of assessments presented by individuals who had any relations with person investigated. In opinion of A.S. Yepishev, the method of independent characteristics wider than the biographical one and it gives an opportunity to assess objectively mental features of a person [10, p. 66].

In addition, A.I. Zykov notes that the materials received this way should be carefully analyzed and compared each other in order to exclude any subjective factor, which presents in them. This is allowed to establish the characteristics, which are more corresponded to purposes and directions of investigations made and analyze psychological structure of the personality [13, p. 81]. The method of independent characteristics is a way to receive information about personality in forensic psychological research and as usual this method is combined with bibliographical method and the method of questionnaire.

The latter presupposes questioning of considerable number of individuals with strict established form containing the questions are interested an investigator. According to D.G. Koren and D.I. Goldman, questioning method allows defining characteristics of mass phenomena, their tendencies, limiting or spreading, number in general structure of phenomena [14, p. 66]. The questioning method is mainly applied to clarify the parameters of researching of forensic investigative action, in particular, for ability to solve professional tasks, terms of activity and the ways of their optimization, typical negative events, forms of organization, requirements brought to personality, tendencies and reasons their appearance etc.

The method of interviewing is one of the most effective methods of legal psychology, which is widely applied in theoretical studies. A core of which is to receive opinions of an individual regarding certain events, circumstances, actions. Information having a boarder social psychological and forensic psychological character might be received by using this method. As S.I. Kudryavtsev justly notes, an opportunity to interview uncertain number individuals gives to investigation a character of sociological generalizations, forensic psychological direction of which is defined with subject matters of law enforcement activity [16, p. 21]. An interview helps to receive different information from the persons carrying out various functions

in proceedings. So, when judges are interviewed, one may receive information about circumstances impacting on formation their inner conviction under evaluation of evidence, educational role of judicial process, shortcoming and merits of judicial procedure, importance and results of planning of court investigation and other. Interviewing of investigators provides material about their professional preparation, ability to solve thinking tasks, overcome psychological obstacles at time investigation of crimes having features of typical situations, and also about conditions are caused the formation of professional deformation, optimal methods planning and organizing of investigative activity.

It is above noted that researching problems of psychological cognition in criminal proceedings we are using the concepts “criminal process” and “criminal proceedings” like equal, despite the fact that according to the CPC they are different concepts.

Position of a lawmaker is not clearly in this matter, but it is presented that given by him conceptions do not contradict each other as a combination of procedural actions and accepted decisions takes part in all stages of criminal proceedings: pre-trial and court ones. The question is a reference to “criminal prosecution”, but this is a topic of special research.

Speaking about the methods of forensic psychological research we need say that their development and introduction in Azerbaijan and the CIS countries is lower copying of the forensic psychology achievements in such countries like Canada, the USA, Great Britain, Germany, France, Japan and others. In our opinion, there are few objective and subjective reasons of this. The main is an intensive financing of the sciences development. The second is concluded in absence of real opportunities to form alternative ways for development of judicial psychological expertise due to absence of alternative expert institutions. Stagnation of this kind of investigation is caused by monopolizing of an expert activity.

So, nowadays, there are modern methods of forensic psychological research are applied in mentioned countries. The pointed analysis, assessment and collection of the results of online-questioning, pre-active and situational analysis of criminal

behavior, background analysis of criminal situations, dispersion analysis of occasional characteristics of an individual, method of ranking of representational characteristics of criminal actions and many others are among them; on existence of which our researchers are known only from informative publications [20, p. 124-125; 21, p. 247-249; 22, p. 168-169].

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