

Problems of production of investigative actions and organizational measures on crimes committed by persons not reached the age of bringing to criminal responsibility

Abstract: Due to incompleteness and contradictions the Criminal procedure legislation of Azerbaijan Republic does not ensure the rights of persons not reached the age of bringing to criminal responsibility.

Provisions on production of investigative actions and organizational measures do not stipulate of the minors, a status of them is absent.

Keywords: investigative actions; organizational measures; age; criminal responsibility; a minor.

Article 7 of the Code of Criminal Procedure (further, the CCP) does not contain a concept of investigative action, but article 134.2 of the CCP relates to such inspection, testifying, identification of a person and item, seizure, search, arrest of property; arrest mail, telegraph and other correspondences; interception of telephone conversations, messages etc; interception of the messages of private, family, state, commerce and professional secret, including data about financial operations, statement of bank accounts and tax payments; exhumation of a corpse; interrogation, confrontation and checking the testimonies in an occurrence place; receiving of the samples for expert examinations or research; investigative experiment [9, p. 159].

The CCP also does not contain a concept of organizational measures, to which are related procedural acts, directed onto: regulation of investigative course and its completion; ensuring of observation and realization the rights of participants of criminal process; the formation of procedural decisions accepted by an investigator; expression of assessment of case work's results [5, p. 11-14].

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Organizational measures are the form of expression of external managing aspect of investigator's activity; they are the means of organization of specific investigative act, which ensures legality and efficiency of a process of collection, examination, evaluation and using of the evidences in purposes of comprehensive, full and objective clarification of case's circumstances. Essence of organizational measures of an investigator in process of crime's investigation is manifested at their assisting nature upon resolution of the investigation's tasks and obtaining of effective results of work on criminal case [3, p. 11-12].

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

Classification of organizational measures on sign of their role in process of proving presents certain interest for our research. It includes the following: a) organizational measures, which determine the ways of receiving the evidences on case in whole or in some situations (ex. make up investigative plan); b) organizational measures, which ensure indirect obtaining of the evidences, i.e. receiving the evidences by the next actions (assignment of revisions; reclaiming of items and documents); c) organizational measures, which ensure direct reception of the evidences (measures on organizational of specific investigative action) and d) organizational measures, which do not direct onto proving (arrest of property; seizure of property and passing it at storage) [1, p. 12-14].

The results of made research allow asserting that provisions of criminal process in part of production of investigative actions and organizational measures with participation of persons not reached the age of bringing to criminal responsibility non-fulfilled due to their contradictions and non-correspondence to each other.

So, interrogation is an investigative and judicial action, which is concluded in receiving of testimonies of questioned person on known him facts by investigative body or court, which have significance on criminal case.

In dependence on procedural status of interrogated person are distinguished questioning of victim, suspected, accused and expert. In addition, in dependence on

age of interrogated person is distinguished a questioning of adult, minor; on sequence - initial and repeated, and from situation taken by interrogated person - questioning of a person giving true testimonies and questioning of a person giving obviously false testimonies.

The purpose of interrogation is to obtain true testimonies, which objectively reflected the actual circumstances of a case. For this, questioning should be objective, comprehensive, completed and planned, which is ensured by its careful preparation [4, p. 12-14].

Under investigation of criminal cases in respect of minors not reached the age of brought to criminal responsibility, the latter may participate in a process only as witnesses therefore all investigative actions and organizational measures are considered concerning this category of proceedings' participants.

Meantime, according to article 95.2.1 of the CCP, persons, who due to under age cannot correct perceive and state circumstances subjected to investigation, may not be summoned and questioned as witnesses [9, p. 103]. Thus, the law does not allowed even summon these persons, and not only their interrogation.

According to article 126.5 of the CCP, information of the persons, who are not subjected to questioning as witnesses, may not be used as evidences [9, p. 147].

At the same time, article 228 of CCP permits an interrogation of minors at age up to 14 years old without limits, consequently, all categories of minors, including under age [9, p. 237].

According to articles 104 and 105 of the CCP, persons up to 14 years old, who are potential suspected or accused but remaining in status of witness, might have representatives and legal representatives, including lawyers [9, p. 124-126].

But, they have only duties, but not the rights of legal representative of suspected or accused, about which articles 104.3 and 105.2 of the CCP is said. In our view, this is deprivation of the rights of persons not reached of the age of bringing to criminal liability, and therefore participating in process as witnesses.

Correspondently, the rights of witnesses are less than the rights of suspected and accused, in which can be convinced under comparison of the articles 90, 91 and 95 of the CCP.

In addition, from criminalistics side is that questioning of a minor as witness or producing other investigative acts, an investigator will be use tactical techniques developed for suspected and accused including legal influence.

So, according to article 230 of the CCP of Azerbaijan Republic, in introduction part of a record of witness are indicated his surname, name, patronymic name, date and place of birth, citizenship, education, place of work, kind of business or duty, place of actual residence and registration, information about relationship to suspected, accused and victim, are made notes about clarification of rights, duties, responsibility and particularities producing on interrogation [9, p. 237-239].

In addition, under questioning of minors necessary to make clear also other data characterizing them and having significance for case, ex. such as nationality, family status, state of health, etc. that is presented very problematic due to age of minor and uninformed of representatives on these issues, either a lawyer or an employee of guardianship body.

According to article 228.4 of the CCP of Azerbaijan Republic, before questioning a witness, not reached the age of 16 years old "... is clarified only his obligation to say truth, but he is not notifies about criminal responsibility for refusal to give testimonies or giving obviously false testimonies" [9, p. 237].

This provision of the CCP is presented to be wrong as obligations of a minor to say truth does not exist.

According to criminalistics' provisions, investigator is always needed to convince the persons of criminal case in necessity to give true testimonies to be refused on chosen wrong tactics of behaviour. As far as he is skilled with means of influence depends execution of proceedings tasks. Psychic influence on a personality might not be excluded from the means applied under crimes' investigation [6, p. 39].

In course of criminal procedural activity participants render each other appropriate influence that is objective regularity. Therefore, the law is not allowed to

ask oriented questions in order not to allow external impact onto questioned person, instruct conducting of separate interrogation (article 227.3 of the CCP), production of confrontation is permitted simultaneously only between two persons (article 235.1 of the CCP). But, even very correct execution of all rules interrogation producing does not guarantee a questioned person from mental impact from investigator's side. Therefore, the law is not permitted asking oriented questions in order to protect an interrogated person from inspiration and instructed conducting of separate questioning (art. 227.3 of the CCP) in order not to allow external impact onto questioned person, production of confrontation is permitted simultaneously only between two persons (art. 235.1 of CCP). But, even exact fulfillment all regulations of questioning do not guarantee of interrogated from mental impact of an investigator. Any form of communication, especially verbal, presupposes an impact. Moreover, even neutral mutual presence is influence one man onto other one [8, 84-91].

An investigator is entitled and obliged to influence onto persons in order to carry out actions in course of investigation. He has to convince of accused to give true testimonies, to refuse from chosen wrong position taken him. This is legal mental impact on interrogated person, subordinated to establishing of true. But, it is important to define accurately limits between actions and techniques of investigator, which is allowed by the law, morally and by action, presenting as mental violence. If mental influence onto person is linked with coercion then such impact is considered to be inadmissible [2, p. 21-27].

All stated is true and does not call special objections, if we take into account that mentioned methods and techniques are directed to adults, and therefore this is amorally in respect to minors.

This is one part of issue, and other more complex one is to ensure a right to defence, including through keeping quiet information and lie. The law does not prohibit such methods of defence to suspected and accused persons, and potential witnesses not reached the age of bringing to criminal responsibility; this chance exists without any consequences.

Position of representatives is the main in these situations, which unlikely will help to minors any legal ways to avoid a responsibility, and the best case, they will conduct themselves like strangers.

Everything is stated is to relate to production and other investigative actions and organizational measures with participation of persons not reached the age of bringing to criminal responsibility.

So, according to article 236.3 of the CCP, a defender of suspected and accused person has the right to participate in inspection, but in our case a person not reached the age of bringing to criminal responsibility, but participating in a process is deprived of this right [9, p. 244].

The same situation is with identification, search, seizure, checking of testimonies at place and other investigative actions [9, p. 248, 252, 261, 262].

There is more unclear with identification. According to article 238 of CCP, identification of a person against his will is produced only on court's decision, except detention of arrest. In addition, a defender of suspected or accused has a right to participate in identification [9, p. 246].

But, there is neither suspected nor accused in our case, as cannot be applied arrest and detention.

According to valid CCP, persons, who not reached the age of bringing to criminal responsibility, are deprived the rights under assignment and production of expert examination, experiment, checking of testimonies at place, seizure of samples etc.

We should especially draw attention to search of individuals who not reached the age of bringing to criminal responsibility. According to article 278 of the CCP, search may be brought only in respect of accused, and it is impossible to summon of these persons.

Summarizing above stated, we believe necessity to enter at the CCP a concept of a person who not reached the age of bringing to criminal responsibility, but suspected in commission of crimes with determination of his status, which guarantees ensuring his rights and interests.

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