Shiraliyeva S.J.◆

Genesis of criminalistical tactics

Abstract: It is considered history of conception, development and formation of criminalistical tactics.

Legal documents are analyzed – manuscripts, historical monuments, works of art, containing the provisions of tactical and criminalistical nature.

Keywords: criminalistical tactics; evidence; mechanism of crime; criminalistical knowledge; law; court; process.

Like the most part of juridical sciences history of criminalistics has been traced to the first types of state and law, which appeared in result of primary society decay. First serious violation of the behavioural rules, which established by a state – traditions or laws – created necessity its investigation, establishment of criminal's personality, circumstances, mechanism and reasons of crime's commission. This, in turn, stipulated necessity working out the provisions and recommendations on arrangement and planning of forthcoming work, techniques of conducting and combining of certain actions of procedures, and determining of an optimal line of executors' behaviour with considering of their interrelations and established rules. In fact, indicated provisions and recommendations created criminalistical tactics like a branch of one of the significant juridical sciences.

Slave owning state and law was the first type of the state and law. Forms of these states were distinguished dependence on formation's conditions, development of economic basis, and relationship of driving forces and geographical environment.

Law was closely associated with religion, which sufficiently influenced at its origin and formation. Under formation of legal norms religious views played a role of legal awareness, and sometimes they got a legal nature [5, p. 4-5].

◆ **Shiraliyeva Sabina Javanshir qyzy** – PhD in Law, a member of Council of International Organization for Legal Researches (Azerbaijan). E-mail: mopi_sid@yahoo.com

Historical monuments, manuscripts, works of art, which extant and reflecting that period of history, contain a lot recommendations and provisions of tactical and criminalistical nature, concerning an issues of crimes' mechanism, their participants, regularities of collection, evaluation and using of evidences, special means and methods of investigation and court examination, preventing of crimes, individuals, who detecting crimes. Some legal documents of that time contain the attempts of consolidation of criminalistical knowledge, main part of which have developed and used nowadays. They are the tactics of the most investigative actions and non-traditional criminalistical technique (hypnosis, polygraph) and much more.

In Ancient Egypt, at period of Early Kingdom (about 3100-2800 B.C.), there were official clerks-scribers at office of jati, duties of which were detection of separate kinds of crimes. In office of Nomarchs who governed with nomes, Egyptian province, there were also special officials who carried out search criminals and detection of crimes. Armed detachments of Nubian Negros, which executed police functions, had sought of hidden criminals [7, p. 13].

In period of New Kingdom (approx. 1575-1087 B.C.) in Ancient Egypt, the courts (kenbets) were created, in office of which were clerks-scribers who were obliged to gather evidences for case's examination. Investigation of crimes consisted on receiving of written answers of questioning persons, submitting material and written evidences by the parties. Oath and trial by water were a direct element of procedure under investigation of some crimes. Officials-investigators and judges had produced experiments and confrontations in order to establish the truth. Clergymen applied hypnosis and special instruments, which had allowed registering changes in organism when he gave testimonies [5, p. 6].

"Instruction to jati" (text extant on the walls of Theban tombs in the Valley of Kings), prophecy of a priest of Neferah and the Admonitions of Ipuwer (Papyrus Leiden) were a wide legal documents extant from Ancient Egypt. The last document mentions "The laws from court session" containing guidelines on collection, examination and evaluation of evidences, which was used by judges. The Code of Hammurabi (18 century B.C.) is a significance Ancient Babylonian law code. On the

stone slab there are 44 columns and 28 paragraphs that contained 282 laws. The stele was erected at Sippar, city of the sun god Shamash, god of justice, who is depicted handing authority to the king in the image at the top of the stele.

According to Hammurabi law code (articles 1-11), criminal cases had been instituted on initiative of private persons, but not public bodies. Clerk-scriber informed a court about statement of complainant, after that judge had begun questioning of the parties and witnesses, familiarized with material and written evidences. To register of convicted persons hallmarking and maiming were applied.

Law of Ancient India was also associated closely with religion and religious moral. Our data concerning to ancient Indian law is based mostly on the Vedas (religious books) and Dharmaśāstras – collection of religious and legal instructions (Dharmas), significant of which are Dharmaśāstras of Manu (2 century B.C.) [4, p. 73].

Crimes' investigation in Ancient India carried out by a court, which was kept a formal assessment of evidences. Criminal cases were initiated by initiative of private persons, who had to convince a court in their rightness and submit appropriate evidences. Slave, children and individual with bad reputation might not be witnesses at court. Women might give testimonies only in respect of women, about "twice born" might testify "twice born" only. If witnesses had given different testimonies then testimonies of majority were taken in attention. In case of absence of such, a court accepted as actual the testimonies of those who had "good qualities". Widely practiced applying to "God's court" – oath, testing by fire, there were recommended services of secret informants and informers [7, p. 14].

Historical tradition relates appearance of the first written laws of Ancient China to state of Shan (In). This tradition, which may not be rather reliable, compiling of specialized criminal code arrogated to a governor of state Chou Muvan (10^{th} century B.C.). The code had consisted on 3 thousands articles and contained recommendations on interrogation of witnesses, application of tortures, testing by water and fire.

Compiling of number collections of laws is related to 5-2 centuries A.C., among of which the "Book of laws" (Fatszin) prepared by Way Li Ku (424-387 B.C.) was

the most known. This book consisted on six Chapters and stipulated valid in China criminal and criminal procedural legislation, described techniques in lie exposure, listed consequence of questions, which had to be asked to relatives of accused, recommended to subject an accused person to arrest and tortures, if he was not confessed in crime's commission.

The Areopagus was the first historical investigative and judicial body in Ancient Athens, which, on instruction of People's Assembly, had been obliged to conduct investigations of public crimes. Investigation's results had been told People's Assembly, and a case was examined by Heliaia. Investigation of public and other crimes consisted on interrogation of the parties, examination of written and material evidences, checking of testimonies through experiments and inspections, which had a wide dissemination and development [5, p. 7-8].

Until 2nd century B.C. in Ancient Rome there was not established any rules of proceeding in criminal process. Magistrates produced investigation of criminal cases and adjudicated them, being guided with own discretion. Arbitrariness of magistrates was limited only by the laws of Valerius, Aternius Varus and SpuriusTarpeius

At 2nd century B.C. there were established permanent commissions on investigation and examination of criminal cases in Ancient Rome. Court proceedings in commissions carried out on basis of special instructions, at which corpus delicti was defined, assigned type of punishment and had determined the rules of conducting of interrogation, confrontations, inspections of places of occurrence and examination of material evidences.

Inquisitional process was introduced and confirmed in Ancient Rome at time of the Principate and Dominate. Characteristic features of this process were: combining investigative and judicial functions in a person of judge, confidential nature of production, deprivation of accused person's rights; laying obligations on accused person to prove his innocent; formal theory of proving, qualifying value of witness' testimonies on class' signs; assertion that king of evidence is confession of accused person and application of tortures on these ideas as to accused person so and to witnesses [7, p. 16].

Inquisitional process, established in Ancient Rome, was used at feudalism period in Western and Eastern Europe, where the main source of law was a usage. So, in period of 5-9th centuries on territory of Frank state carried out record of tribes' customs in form of so named "laws of the barbarians". There were the Salic law, the laws of the Ripuarian Franks, Alamanic law, the law code of the Burgundians and other laws. In 802 Charles the Great ordered to draw up "the laws" all tribes, which were in his empire and had not written records of their customs at that time.

One of the significant legal systems of medieval East appeared and formed in Arab caliphate – Muslim law (sharia). Action of the sharia did not limited with frames of Arab caliphate, and spread far its bounds. Both, Muslim religion and norms of sharia had spread in territory of Near East and Central Asia, Caucasus, Northern and partly Eastern and Western Africa, some countries of Southern and South-East Asia. Muslim law combined lot elements of previous legal cultures of the countries, in particular, legal customs and traditions, acting in pre-Islamic Arabia and the territories conquered by the Arabian [4, p. 484].

Sharia is legal regulations, an integrated from theology of Islam and closely associated with its provisions. **Islam** considers legal requirements as part of single divine law and order, in connection with that commandments and prohibitions, consisting norms of sharia is enacted divine significance. With distribution of **Islam** and transferring at one world's religions, sharia became a peculiar world's system of law.

Being a holy book of Muslims, which compiled by prophet Mohammad, **Quran** is considered to be a significance source of shariah. Canonized content and development of final edition of Quran were made under caliph Omar (644-656). Quran consists of 114 chapters (suras) divided on 6219 verses (ayats), more than 500 of which contain the regulations classing to shariah [5, p. 13].

According to Muslim law, process had accusatory nature. Cases had been instituted by interested persons, but not by state's name. Judicial cases were examined publically, typically in mosques, where everybody might be participated. Process was hold in verbal, there was no written clerical work applied; though courts'

records were made up at Abbasid ruling period. Confessions, testimonies of witnesses and oaths were considered to be the evidences. Case had to be resolved at one court session; it could not be postponed the next day. Accused person's confession in crime commission was not caused cancellation of process, i.e. complex of evidences was required to prove guilt. It was recommended to watch for behaviour and mimics of witnesses and accused persons under interrogations of them. It was not allowed tortures and actions, which had offended or humiliated a person [7, p. 19].

Inquisition, which created to prosecute and eradicate heresy with means of violence, has a special place in history of criminalistical tactics. Heresy was understood by a church like intentional denial of Catholic beliefs articles and open and strong upholding the erroneous views. Heretic was considered to be a believer, who familiarized with catholic doctrine, but denying of it and preaching ideas, which contradicted to it. A Rome papa was a Supreme head of inquisition. Inquisitors were appointed by him and subordinated him only.

With beginning of their activity, inquisitors were accused in that they were being used with absence of any control, falsified testimonies of arrested persons and witnesses. In connection with this, there were positions of notaries and assisting witnesses in a system of inquisition, which, ostensibly, had to assist to impartiality of investigation.

Notary countersigned with his signature the testimonies of accused individuals and witnesses, participating under questionings. As rule, notary had a clerical title and despite that he was appointed by the papa, he had received a salary at inquisitor, the assisting witnesses were monks of the Dominican Order, in jurisdiction of which inquisition was.

Denouncement or testimonies of person under investigation, brought against third person, were grounds to begin an investigation at inquisitional process. On the base of one of the documents an inquisitor began preliminary investigation, questioning of witnesses, who could confirm accusation, collected additional materials about criminal activity of suspected person and his statements, and sent requests to other inquisitional tribunals to detect additional evidences. After that

collected materials were sent qualifiers, who made a decision whether should bring accusation in heresy to suspected person. Being received positive opinion of qualifier, an inquisitor ordered to arrest of suspected. Arrested person had been placed at secret prison of inquisition in full isolation from external world. Death of accused person as well as his insanity was not a reason to cancel an investigation [5, p. 15].

Interrogation of accused person was one of the main stages in inquisitional procedure. The goal of this questioning was to get a confession him, and consequently renunciation of heretic views and reconciliation with the Church. Inquisitor was carefully prepared to questioning of accused person. He had familiarized with biography of accused person, being tried to find the facts, which could be used in order to make him obey his will.

The interrogation was begun with that accused person was made under oath give obligation to obey of the Church and to reply truthfully on inquisitors' questions, to say everything he had known about heretics and heresy, and to fulfill any punishment imposed to him. After the oath any given response of accused person, which had not satisfied an inquisitor, was a ground to accuse his victim in perjury, apostasy, heresy and consequently to be threaten him with fire.

In course of interrogation an inquisitor had avoided to bring specific accusations as he was feared that his victim would had been ready to give any required testimonies in order to get rid his tormentor. Inquisitor had asked dozens of various and had no often any attitude to a case questions in order to mislead of interrogated, make him do contradictions, speak absurdities, confess small sins and vices. It was sufficient to reach confession on blasphemy, failure to comply with one or another religious ceremony or violated their marriage vows, an inquisitor had forced his victim to confess "sins", consequences of which were more danger and serious for him.

Ability to produce questioning, i.e. to receive a confession of accused person had considered to be the main inquisitor's merit. Later, it was appeared necessity in detailed instructions or guidelines for inquisitors, in which had been summarized an inquisitional experience and given the ways of interrogations assigned for followers of different sects. Editors of these inquisitional "Vademecums" had been based on

precondition that their victims were shameless liars, wisest hypocrites, "servants of the devil", who should be detected and made confess in their "dirty crimes" with any means and through thick and thin.

An author of one of these "guidelines", inquisitor Bernard Gee noted that it was impossible to draw up such interrogation scheme forever. This case, Gee wrote, "sons of underworld" quickly got used to the united method and easy learnt to avoid any obstacles made by inquisitors [7, p. 21].

Inquisitors could not always receive confessions only with smartly and cunningly designed questionings. In this case they had used other actions – lie, deception, intimidation, which had to suppress a personality of accused individual, psychologically corner him, to be caused his fatality. In order to receive desired result, an inquisitor had also used falsification of the facts. Not being had any grounds, he asserted that crime had proved and confirmed with numerous witnesses' testimonies including his co-workers, neighbours, relatives and friends. He was saying that accused person could avoid afire and saved his relatives and friends only through full and sincere confession of his guilt [5, p. 16-17].

In order to convince of accused to give required testimonies skilled provokers had been sat to his cell. They had pretended supporters and well-wishers of accused individual, aspired to get new evidences or convince his to confess. If these had no any results then his wife and children were used. Threats had changed with tenderness. Prisoner was delivered from stench prison and placed in clean room where he had been feed and treated to him with visible kindness in order to weaken his resolve being wavered between hope and despair.

Inquisitors had a lot another "humane" means to break their victims' will. But if they saw that impossible to break of accused person with persuasion, threats and cunning, then had applied violence, tortures being sure that physical suffering enlightens the mind is much more effective than moral one.

In our view, this was a stage of criminalistical tactics' creation, which ended in the middle of 19th century with publishing in Frankfurt two volumes "Guidelines on judicial investigation" book (1838-1841) of Ludwig von Jagemann [5, p. 20].

The first volume was dedicated to investigation theory and the second one – on 344 samples from investigative practice had stated advices and recommendations on production of crimes' investigation [124, p. 20].

At the end of 19th – beginning 20th centuries is began the stage of consolidations of criminalistical knowledge, including those directly associated with criminalistical tactics. Founder of this stage like a new branch of knowledge, named criminalistics, was an Austrian judicial investigator, Hans Gross (1847-1915), Professor of the German University in Prague. In 1892 H. Gross published fundamental work "Guidelines for judicial investigators, gendarmerie and police officers", where he systemized all known means and techniques of works with evidences, developed a number of original recommendations on using of achievements of various sciences of that time in purpose of detection, seizure and examination of traces and other material evidences, described everyday life and jargon of professional crimes, the most disseminated in practice the ways of crimes' commissions and concealment and formulated the basis of provisions' using of criminalistical tactics under detection and investigation some danger crimes [7, p. 27-28].

Subsequent ideas of H. Gross in part of criminalistical tactics have been developed in the works of A. Weingart, K. Nigeforo, A. Reiss, S.M. Potapov, C.N. Tregubov, H. Schneikert, W. Stieber, R. Heindl, E. Anuschat, I.N. Yakimov, V.I. Gromov and other scientists-criminalists [5, p. 23-24].

From views, which will be stated below, this stage of criminalistical tactics' development we attribute to the end of 20th century, but we subdivide it on two sub-stages: first and second half of century.

In our view, the greatest development up to current condition the criminalistical tactics reached at the second half of 20th century, with appearance of fundamental works on criminalistics the following authors: L.E. Arotsker, R.S. belkin, A.I. Weinberg, N.I. Tukovsky, I.N. Yakimov, V.I. Popov, N.I. Porubov, A.R. Ratinov, V.E. Konovalova, A.V. Dulov, V.P. Vasilyev and many others scientists-criminalists.

In area of criminalistical tactics attention of scientists at that period were paid to problematic of investigative situations (I.F. Gerasimov, L.Y. Drapkin, O.Y. Baev,

V.K. Gavlo, V.I. Shikanov and others), tactical combinations and other criminalistical complexes (A.V. Durov, R.S. Belkin, V.A. Zhbankov and other), tactical decision and tactical risk (S.I. Tsvetkov, D.D. Osipov, G.A. Zorin).

At the junction between tactics and methods carried out research of cognitive nature of investigation (I.M. Luzgin, N.A. Yakubovich, B.E. Konovalova, A.A. Eisman and others), organizational basis of investigation and its effectiveness (L.A. Soya-Serko, A.I. Mikhailov, A.B. Soloviev, L.I. Suleymanov), system of investigative actions (I.E. Bykhovsky) and others [7, p. 42-43].

Significance of enlisted works for development and formation of traditional criminalistical tactics is obvious. In addition, in our view, excursus in the past allows asserting that from the time of Bernard Gee's recommendation until the end of 20th century criminalistical tactics, especially in part of production of procedural actions, which have the most practical significance, has not significantly changed. Changes in criminal procedural legislation have stipulated research and new provisions and recommendations come from them in part of moral grounds and principles of criminalistical tactics, and as practice shows, the most part of them, have been unsubstantiated.

Stated circumstances have caused a search of new forms of criminalistical tactics in the end of 19-20th centuries by some scientists of the USA, Germany and Belarus. They began to research in order to improve some procedural actions with using in their tactics the modern provisions of various sciences, which have indirect attitude to criminalistics.

There are the following research and results received: the method of psychological profile, interrogation in especial condition of conscience, questioning with use of polygraph, "drag interrogation", methods of criminalistical matrixing, analysis of managing decision, function of activity (A.V. Dulov), techniques of criminalistical of analysis, use of inversion, effects and traps (G.A. Zorin), method of tactical influence on base of determination bio-rhythmical parameters of interrogated person, use of musical smell background under interrogation (N.N. Kitaev, M.A. Mikhaylov) and others [1; 2; 6; 8].

Stated period might be conditionally attributed to the stage of formation of integrative criminalistical tactics, but the first mentioning about it like integrative and module form we met only in 2001 in work of G.A. Zorin, M.T. Zorina and R.T. Zorin "Possibilities of criminalistical analysis in processes of preliminary investigation, public accusation and professional protection on criminal cases" [3].

Integrative criminalistical tactics, which based on traditional, is at stage of formation, its core determined only boundary. It is necessary to determine concepts, subject and structure of it, place in theory of criminalistics, correlation with other branches of knowledge, theoretical bases, principles and functions, particulars, systemic elements and their functioning.

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