

Tactics of interrogation with participation of interpreter during investigation of economic crimes

Tácticas de interrogatorio con participación de intérprete durante la investigación de delitos financieros

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Content

- [1. Introduction](#)
- [2. Methodology](#)
- [3. Results](#)
- [4. Conclusions](#)
- [References](#)

ABSTRACT:

The purpose of the work is to study the issues that are related to the situation of interrogation with participation of interpreter during investigation of economic crimes. Specifics of this situation are determined by the fact that according to the criminal procedure legislation of the Russian Federation, a person who does not know or insufficiently knows the language of proceedings, has a right for free services of interpreter. At the same time, tactical recommendations for interrogation in the crime science are developed for the situation when the subject of law enforcement activities and the interrogated person speak the same language. Besides, in case of investigation of economic crimes, the very economic terminology is very complex – the interpreter has to know it as well as he knows the language. The method of achieving this goal is comparison of tactical means that are peculiar for the situation of monolingualism and polyglottism of participants of criminal proceedings. The determined substantial differences of implementation of interrogation with participation of interpreter during investigation of crimes in the sphere of economy determine the novelty of this article.

Keywords: crimes in the sphere of economy, preliminary investigation, language of proceedings, interrogation, tactics of interrogation, communicative

RESUMEN:

El propósito del trabajo es estudiar los temas relacionados con la situación de interrogatorio con la participación del intérprete durante la investigación de delitos financieros. Los detalles de esta situación están determinados por el hecho de que, de acuerdo con la legislación de procedimiento penal de la Federación Rusa, una persona que no conoce o no conoce suficientemente el idioma de los procedimientos tiene derecho a recibir servicios gratuitos de intérprete. Al mismo tiempo, las recomendaciones tácticas para el interrogatorio en la ciencia del crimen se desarrollan para la situación cuando el sujeto de las actividades de aplicación de la ley y la persona interrogada hablan el mismo idioma. Además, en el caso de la investigación de delitos económicos, la terminología económica es muy compleja: el intérprete debe saberlo tan bien como sabe el idioma. El método para lograr este objetivo es la comparación de los medios tácticos que son peculiares para la situación de monolingüismo y poliglotismo de los participantes en los procedimientos penales. Las determinadas diferencias sustanciales de la implementación del interrogatorio con la participación del intérprete durante la investigación de delitos en la esfera de la economía determinan la novedad de este artículo.

Palabras clave: delitos en la esfera de la economía,

1. Introduction

Crimes in the sphere of economy are a systemic threat for existence of any society, as they undermine the foundations of its existence, hindering the timely and full implementation of socially important projects on provision of social programs for population and the possibility of development of production on the whole. Thus, fighting economic crimes is one of the main tasks in the whole complex of measures for preventing, fighting, investigating, and solving crimes.

As to the Russian Federation, statistical data on the state of crime rate for January-February 2017 are the following. During this period, 105,087 economic crimes were committed. As to finished and terminated cases of this category, material damage constitutes RUB 234.3 billion. In the total number of economic crimes, grievous and extremely grievous crimes constituted 56.9% in 2017. These data show that more than half of economic crimes have the qualifying content and are peculiar for high level of social danger (Ministry of Internal Affairs of the RF, 2018).

2. Methodology

It should be noted that criminal science does not have a common opinion as to classification of economic crimes. Different authors use different bases for classification. Thus, crimes against property are qualified depending on direct object (Tenchov, 1997), subjective and objective party (Neznamova, 1998), object of invasion (Boytsov, 2002), profit (Kochoi, 2000), character and level of public danger, guilt (Kuznetsov et al., 2006). In the sphere of economic activities, crimes are classified depending on the object of invasion (Aslakhonov, 1997), type of public relations (Gaukhman, 1998), direct object of invasion (Afanasyev, 1998), method of execution (Pogosyan, 1998), on the basis of the sphere of economic activities and its subjects (Volzhenkin, 2002).

In criminal science, the issue of classification of crimes, including economic crimes, is important not only from theoretical but also from practical point of view, so it is related to methodology of investigation of crimes – methodology of investigating homogeneous groups of crimes. Criminalistic classification of crimes is based on criminal data but in view of peculiarities of investigation of crimes – i.e., it takes into account criminalistics factors. The problems of criminalistic classification are studied in the works R.S. Belkin (Belkin, 1997), V.A. Obratsov (Obratsov, 1988), S.A. Kuemzhieva (Kuemzhieva, 2018), etc. The basic notion in the methodology of investigation of crimes is criminalistic characteristic of crime. This notion was first offered by A.N. Kolesnichenko in 1967 (Kolesnichenko, 1967). The very content of this scientific notion and the list of its elements are still the object of discussions of scholars. Different authors include into criminalistic characteristic different elements – the mechanism of emergence of prints (Gerasimov, 1994), typical attributes of a certain type of crime (Tanasevich, 1976), typical investigatory situations (Panteleev, 1975), method of execution of crime (Mukhin, 1994), data on material evidences and the method of execution of crime (Shurukhnov, 1988), data on connections and structure of organized crime groups (Meretukov, 2010), etc.

During investigation of economic crimes, the following elements of criminalistic characteristics are distinguished:

- method of execution of economic crimes;

- attributes that characterize the methods of execution of crimes;

- information on supposed witnesses;

- data on peculiarities of personalities of witnesses, victim, and criminal and factors that influence their form of behavior and peculiarities of testimony during

investigation;

list of documents for investigation of economic crimes, with traces of crimes, and documents that could be means of uncovering of crime and determination of factual circumstances of the case;

list of objects that preserve traces of crime and objects that could be means for uncovering of crime and determination of factual circumstances of the case;

objects on which criminal actions were aimed during execution of economic crimes (including money, valuables, and other property that are obtained as a result of crime);

other factual data (Larichev, 2012).

Speaking of peculiarities of personality of a suspect, accused, victim, or witness, it is necessary to note the fact that has remained outside the field of view of theoreticians and practitioners of criminalistics. Here we speak of language self-identification of participants of criminal proceedings. Attentive consideration of the problem of using native language or language that the participant of criminal proceedings knows shows that it is the factor that determines the investigation situation and influences the tactics of proceedings of investigative activities.

The Russian Federation is the state in which various nations and peoples live. According to All-Russian census of 2002, 190 nationalities live in Russia, which speak 160 languages (Census, 2002). That's why the issues of investigative activities with participation of persons whose native language differs from the language of criminal proceedings are very topical.

According to Part 1 Article 18 of the Code of Criminal Procedure of the RF, criminal proceedings are conducted in the Russian language and in the state languages of the republics of the RF. Criminal proceedings in the Supreme Court of the RF and military courts are conducted in Russian (Code of Criminal Procedure of the RF, 2001).

Provisions of Article 18 of the Code of Criminal Procedure of the RF envisage that in case when participant of criminal proceedings does not know the language of the criminal proceedings, the participant has the right to use his native language or other language he knows. Also, participants of criminal proceedings who do not know the language of the criminal proceedings have the right for free services of interpreter. Besides, if investigation and court documents are to be given to the suspect, accused, and other participants of criminal proceedings, these documents are to be translated into the language of the participant of criminal proceedings.

Traditionally, solving the task of provision of language rights of participants of criminal proceedings in legal science was based on using interpreters in investigative activities.

Article 59 of the Code of Criminal Procedure of the RF defines interpreter as a person that is used in cases envisaged by the Code of Criminal Procedure of the RF in criminal proceedings. This article of the Code of Criminal Procedure of the RF envisages only one requirement for interpreter: know the language, which is necessary for translation.

It should be noted that requirements in part of knowledge of language that is necessary for translation are higher in foreign countries. Thus, for example, there is the Consortium for certification of court interpreters in the USA, which covers 40 states (NCSC, 2010). This organization develops common standards for conduct of qualification exams and prepares recommendations for states' supreme courts' setting their rules in view of local specifics.

In Poland, court interpreters have a status of jury interpreters; their activities are regulated by the legal act "Ustawa o zawodzie tłumacza przysięgłego" dated November 25, 2004 (TEPIS, 2014). The task of jury interpreters consists in provision of translation during procedural activities.

The rules for obtaining the status of court interpreter in Spain are set by the Ministry of Foreign Affairs. The authorities for conducting the corresponding exams are set on this ministry (Orden AEX, 2002).

The RF does not have specific professional standards that are set to the person who is used

as an interpreter. Based on the provisions of the Code of Criminal Procedure of the RF, interpreter is set with additional requirement of being sixteen years of age. This requirement is predetermined by the fact that criminal responsibility for intentionally incorrect translation according to Article 307 of the Code of Criminal Procedure of the RF and public disclosure of the data of preliminary investigation starts from the age of 16 (Code of Criminal Procedure of the RF, 1996). Interpreter cannot combine any functions of other participants of criminal proceedings. Besides, a person who is directly or indirectly interested in the result of the criminal case cannot act as an interpreter.

For a person to acquire a procedural status of interpreter, the subject of law enforcement activities has to perform a range of procedural actions.

However, the largest difficulty for investigators is determining the competence of interpreter – this procedure is mandatory before the start of each investigation action in which interpreter participates (Part 2 Article 169 of the Code of Criminal Procedure of the RF). Its complexity is due to the fact that investigator does not know the language for translation from which the interpreter is used. In this case, the subject of law enforcement activities has to judge the competence of interpreter on the basis of studying the presented documents. It should be remembered that the fact of knowing the language is not the guarantee of the person's skill to conduct translation. That's why the persons with philological education with specialization in the sphere of translation should be used as interpreters. An important factor that allows evaluating translation competence is the person's experience as an interpreter. Besides, translation competence in the sphere of court translation could be shown by the fact of usage of the specific person in criminal proceedings as interpreter in earlier cases.

Evaluating the competence of interpreter in case of necessity for using him for provision of language rights of participants of criminal proceedings during investigation of economic crimes, it is necessary to remember that economic and financial terminology is very specific, and correct translation requires the corresponding knowledge of economic or financial terms. That's why it is expedient to use interpreters with economic education for participation in investigation of economic crimes.

3. Results

Let us view tactical peculiarities of participation of interpreter in investigative activities during investigation of economic crimes by the example of the most popular investigative action – interrogation.

Interrogation during preliminary investigation is a complex of cognitive and learning operations that are envisaged by the criminal laws, which is performed by an investigator (Shumilin, 1998). The purpose of interrogation is receipt and establishment of testimony regarding the circumstances that are important for the case. In the course of execution of cognitive operations, the investigator applied the developed and recommended methods and urges the interrogated person to give testimony regarding the circumstances that are directly or indirectly related to the studied event. The investigator receives the information and records it in the envisaged order for it to be used as proof in the criminal case.

In case of interrogation with participation of interpreter, the information interaction between investigator and interrogated person changes drastically: an intermediary link appears, which function is to transform the verbal information. The main complexity consists in the fact that systems of different languages are never similar, as a result of which a part of information is lost or additional information, which is absent in the initial statement, appears. While from the point of view of the theory of translation, this situation is a norm, regarding the sphere of criminal proceedings the lost part of information leads to loss of evidential information, and excessive information, which appeared as a result of translation, is created by translator – i.e., it goes beyond the information picture of the circumstance that is studied within the criminal case.

Another complexity is the fact that the interrogated person and the interpreter can exchange information in the language that is unknown to investigator – as a result of which the investigator cannot control the information interaction along the channel “interpreter” –

“interrogated person”.

The third complexity is that tactical methods, developed by criminal science for ensuring the most rational method of investigator’s actions during implementation of a certain investigatory action, were created for the situation of direct communication between investigator and interrogated person who speak the same language.

As in the conditions of interrogation with participation of interpreter the possibility of investigator’s influencing the interrogated person with the means of direct verbal influence is reduced, the whole complex of tactical means that the investigator can use changes drastically.

The criminal science divides tactical means during interrogation with participation of interpreter into four groups (Shvets, 2016).

The first group of tactical methods envisages the possibility of their usage without preliminary preparation of interpreter and without preliminary explanation of their essence. It is possible when the main element of influence on the interrogated person is the logic of comparison of the interrogated person and reality. In this case, interpreter conducts translation of the semantic part of the investigator’s statements, which does not require from the interpreter any additional skills or actions.

Also, the first group contains certain tactical methods of conventional emotional influence. Despite the fact that such tactical methods influence the emotional sphere of the interrogated person, they are based on logical persuasion.

The second group of tactical methods during interrogation with participation of interpreter contains the tactical methods which usage depends on preliminary explanation of their essence to the interpreter. This group includes tactical means that are based on the principles of emotional and psychological influence. An example could be such tactical means as “indirect question” (sometimes called “diverting attention”), “unexpected question”, “forced rate”, and “slow rate”.

The third group of the viewed classification of tactical methods includes the tactical methods that were specially developed for interrogation with participation of interpreter. Participation of interpreter in this investigatory action envisages the possibility to use the interpreter for the investigator’s achieving the tactical means. An example could be placement of investigator, interpreter, and interrogated person in the investigator’s office. Depending on the spatial organization of placement of these persons, non-verbal psychological influence on the interrogated person could change.

The fourth group of tactical methods of interrogation with participation of interpreter include the methods that cannot be used due to presence of a third person during interrogation – the interpreter. This is the group of tactical methods that are aimed at establishment of psychological contact between the investigator and the interrogated person on the basis of their temporary close communication and separation from the surrounding world. Such methods are implemented in personal conversations. Thus, presence and participation of interpreter at the interrogation violates the trusting mode.

4. Conclusions

Thus, it is possible to conclude the following. During investigation of economic crimes, the situation of the necessity for providing the language rights of participants of criminal proceedings has been without attention from the scholars. Usage of interpreter in investigative activities influences primarily the tactics of production of investigative activities. By the example of the most popular investigative action – interrogation – it is possible to speak of vivid specifics of tactical means that appear as a result of participation of interpreter in investigative action.

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[Index]

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