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SOME PROCEDURAL AND CRIMINALISTIC ASPECTS OF THE INTERROGATION OF THE ACCUSED

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Interrogation is the most common and complex judicial action, consisting in obtaining from the interrogated information about the circumstances to be proved in criminal proceedings. The structure of obtaining the testimony of the accused is determined by the boundaries of the trial and the subject of evidence. The interrogation begins with the presiding judge's proposal to state everything that he considers necessary to explain regarding the charge against him. This tactical technique fixed by the legislator in criminology is called a "free story," in which the interrogated is invited to conduct a story about events known to him, without interference from the interrogator, who only at the beginning sets the general direction of the expected story. The value of a free story increases when a person reports a circumstance that was not known to anyone but himself.

To increase efficiency and achieve the goal of interrogation, a free narrative should be preceded by the establishment of psychological contact, by which I understand the process of establishing and maintaining a trusting relationship between the interrogator and the interrogated in order to obtain complete and reliable information, for the assessment of the quality of which it is proposed to use forensic analysis of testimony.

If the accused invokes the right to remain silent, this does not mean that the interrogation should be stopped immediately. On the contrary, the interrogator may try to convince the accused of the falsity of the chosen position. It is necessary to try to convey to the understanding of the interrogated that without his explanations it will be difficult for the court to verify the validity of the charge brought against him and to verify the version of the defense, if any. You can ask the lawyer whether he explained to the accused the positive consequences of sincere repentance, if not, remind him that without recognition there is no repentance, and without it – mitigation of punishment.

After the end of the free narrative, the prosecutor is the first to question the accused, and then the defender. "The interrogator must stimulate the memories of the accused, who wished to testify in order to enrich his story with even more spontaneously recalled details. Only then can you move on to more accurate information, asking for descriptions of faces, names, addresses, times and alibis. A common misconception in the interrogation technique is that such details are set prematurely, and as a result, the free narrative is interrupted (or even stopped)" (Haas, Ill, 2013, p. 9).

After that, the accused may be asked questions by the victim, other accused, civil plaintiff, civil defendant, representative of the legal entity in respect of which the proceedings are carried out, as well as the presiding judge and judges. The defendant is asked questions aimed at identifying, supplementing and clarifying the actual circumstances, checking the reliability of the testimony, clarifying the attitude to the offense. The presiding judge has the right throughout the interrogation to ask the accused questions to clarify and supplement his answers.

Questions should be asked in a predetermined sequence. Before clarifying the next question, you can proceed only after clarifying the previous one. "A common misconception is that the interrogator lacks the patience to wait to see what happens and asks new questions too quickly. This, in particular, can lead to the fact that the prosecutor reveals more information about the criminal proceedings with his questions than he actually receives from the accused" (Haas, Ill, 2013, p. 11).

An important issue of the tactics of the trial is to determine the optimal moment for the interrogation of the defendant. If the accused agrees to testify, then it is advisable to start with his interrogation, otherwise the court will act in a state of uncertainty about the position of the defense. In the process of examining other evidence, the court checks the versions of the accused, which could change after a preliminary investigation. The study of evidence under such conditions becomes purposeful, productive. Otherwise, the accused, having listened to the witnesses, has time to adjust his versions in accordance with the information received. Having interrogated the accused first, the court fixes his version, which is difficult to refuse in the future.

In situations caused by a change in the testimony previously provided to the accused, the leading role in exposing the lie belongs to the parties who, unlike the court, are familiar with the testimony of the interrogated at the pre-trial investigation. For a judge in this sense, it is important to be able to listen carefully to the defendant to the end, to catch the fictional in his explanations, to determine the ratio of new explanations with other

evidence, to find ways to refute the fiction and choose the tactically correct ways of their implementation.

One of the ways of solving problematic situations of judicial interrogation is the choice of tactics of using already studied evidence and conducting new judicial actions that would connect the available evidence with new ones and contribute to establishing the likelihood of the latter. For example, if the testimony of the accused obviously contradicts most of the proven evidence, then it makes sense to immediately present them. In other cases, it is advisable to gradually demonstrate evidence that can convince the interrogated person of the futility of false testimony.

It is essential for this type of judicial situation to resolve the issue of the possibility of using in court the testimony provided to the interrogated at the pre-trial investigation. This problem is not new, but one that currently has no unambiguous solution in the theory and practice of criminal proceedings. Despite the fact that the situations associated with the change of testimony are typical and quite common, and the question of using the results of investigative interrogations in such a way that each time causes heated discussions between professional participants in criminal proceedings, the court is each time forced to solve them in the absence of any scientifically substantiated recommendations.

My recommendation on this is based on the understanding that criminology has developed many methods of interrogation and only a few of them are mentioned in the text of the law, the use of the rest is a matter of admissibility of forensic means, which are such if they comply with the principles of legality, morality, scientific validity. Of course, if the order of application of a certain technique is determined by law, it should be used in exact accordance with its letter. At the same time, legality as a criterion for the admissibility of numerous tactical techniques does not imply mandatory procedural regulation of each of them. In the absence of regulatory regulation, the rule of legality of tactical reception requires that it be consistent with the basic principles that apply to all criminal procedural activities, and did not result in recognition of the evidence obtained with its use as inadmissible.

Therefore, it is fairer to speak not of conformity, but of its consistency with the law, that is, conformity with the spirit, and not with the letter of the law. If, in relation to a witness, the law directly indicates the possibility of his interrogation in relation to testimony that does not agree with his previous testimony, then in relation to the accused it does not contain any prohibitions on this.

The debatable issue of the theory and practice of criminal justice is the interrogation of a member of a criminal group, the materials of the criminal case against which are allocated in a separate proceeding. In my opinion, such a person in a case on the charge of his accomplice has the status of a witness who, in view of the freedom from self-incrimination guaranteed by law, cannot be forced to testify under the threat of criminal prosecution for refusing to testify and the right to exercise the privilege not to testify against himself.

The same applies to persons whose criminal proceedings are closed by an investigator, inquirer or prosecutor, since the probability of cancellation of decisions to close criminal proceedings by a higher-level prosecutor or an investigating judge remains. If such persons have agreed to testify, they must be warned of criminal liability for knowingly false testimony.

In the question of the interrogation as a witness of the convicted member of the group, the verdict against which came into legal force, the final point seems to have been put by the ECHR, which in the case of Wanner v. Germany (application No. 26892/12) found unacceptable the applicant's complaint about the obligation to act as a witness against former accomplices. The case concerned the applicant's conviction for perjury as a witness in criminal proceedings against his former accomplices.

The Court observed that, as Mr. Wanner's conviction for assault had become final, there was no legitimate possibility of prosecuting him again for his part in the crime, he could no longer rely on the presumption of innocence. The protection afforded by this presumption is terminated when the accused is duly found guilty of the charge in question. It seems that this approach is also applicable when interrogating a person as a witness, a court decision to close criminal proceedings against which has entered into legal force.

Thus, we were able to formulate some techniques and recommendations for conducting interrogation of the accused. The most significant provisions that have a certain degree of novelty should include the following:

– during the interrogation of the accused who changed the testimony, the interrogator may announce the protocol of the investigative interrogation and interrogate the defendant in relation to the previous testimony;

– convict, accused, criminal proceedings against whom are closed by a court decision, as well as a person whose materials are allocated in a separate proceeding, in a case on the charge of his accomplice in any situation has the status of a witness.

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