



Purpose and features of methodology for interrogation in criminal proceedings

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ABSTRACT

In this article there discussed procedural and tactical foundations of interrogation of criminal proceedings participants by judge according to the Laws of the Republic of Uzbekistan. In particular, there determined purpose and grounds for attracting a person to participate in criminal proceedings, specifics of using tactical techniques during interrogation, influence of professional and psychological qualities of a judge on formulation and statement of question, and requirements for processing the results of interrogation. The author's methodology for preparation and conduct of interrogation, as well as correct legal assessment of established circumstances are disclosed.

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Жиноий ишлар бўйича суд жараёнида сўроқ қилиш услубиятининг мақсади ва хусусиятлари

АННОТАЦИЯ

Калит сўзлар:

жиноий ишлар бўйича суд

жараёни

жиноят процессуал кодекс

процесс иштирокчилари

сўроқ

баённома

судланувчи

жабрланувчи

эксперт

Ушбу мақолада Ўзбекистон қонунчилигига мувофиқ жиноий ишлар бўйича суд жараёнида иштирокчиларнинг судья томонидан сўроқ қилишнинг процессуал ва тактик асослари кўриб чиқилган. Хусусан, жиноий ишлар бўйича суд жараёнига шахсни жалб қилиш мақсади ва асоси, сўроқ вақти тактик усулларни қўллашнинг аҳамияти, судьянинг саволларни шаклантиришда ва тартиб бўйича қўйишда профессионал ва психологик фазилатлари таъсири, сўроқ

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гувоҳ
далил
иш бўйича ҳақиқатни
аниқлаш

натижаларини расмийлаштириш талаблари белгиланган.
Сўроқга тайёрланиш ва ўтказишда ҳамда аниқланадиган
ҳолатларга тўғри ҳуқуқий баҳо беришни муаллиф
услубиёти ёритилган..

Цель и особенности методологии проведения допроса в уголовном судопроизводстве

АННОТАЦИЯ

Ключевые слова:

уголовное
судопроизводство
уголовно-процессуальный
кодекс
участники процесса
допрос
протокол
подсудимый
потерпевший
эксперт
свидетель
доказательство
установление истины по
делу.

В настоящей статье рассматриваются процессуальные и тактические основы проведения допроса судьёй участников уголовного судопроизводства по законодательству Республики Узбекистан. В частности, определены цель и основания привлечения лица к участию в уголовном судопроизводстве, особенность применения тактических приемов в ходе допроса, влияние профессиональных и психологических качеств судьи на формулирование и постановку вопросов, требования к оформлению результатов допроса. Раскрыта авторская методология подготовки и проведения допроса, а также правильная правовая оценка устанавливаемых обстоятельств.

The Constitution of the Republic of Uzbekistan contains norms that form separate institutions of law regulating fundamental rights, freedoms and duties of a person and citizen [1]. In relation to legal status of individual in criminal court proceedings, all citizens, entering into criminal procedural relations, on the basis of constitutional status, have the same rights and freedoms and are equal before the law without distinction of gender, race, nationality, language, religion, social origin, beliefs, personal and social status [2]. The equality of citizens before the law and the court in administration of criminal justice is similarly reflected in Article 16 of the Code of Criminal Procedure of the Republic of Uzbekistan [3]. Therefore, the implementation of the requirements of the Constitution and the Code of Criminal Procedure of the Republic of Uzbekistan regarding the observance of human and civil rights and freedoms in criminal process is a guarantee of ensuring the rights and legitimate interests of the individual, which for some reason or other is involved in the sphere of criminal procedure relations. The specificity of criminal proceedings is in the fact that court activity established by law and brought into the form of legal relations, content of which is consideration and resolution of criminal cases. Accordingly, as it follows from procedural legislation, legal status of an individual in criminal court proceedings is characterized by the fact that it arises in view of obligation of prosecutor, investigator and inquiry officer, within its competence and gives the person one or other criminal procedural status, if they detect signs of crimes and need to take all measures prescribed by law to establish the events of crime, perpetrators of crime for their subsequent punishment [4]. This implies that the person is involved in criminal proceedings by gaining publicity at the stages of inquiry and preliminary investigation, therefore, determining the status of trial subject does not largely depend on court. Along

with this, for each trial participant the procedure for attracting in criminal proceedings is determined by place and role, occurrence of event related to crime and occurrence of criminal offenses.

Article 18 of the Code of Criminal Procedure of the Republic of Uzbekistan stipulates that all state bodies and officials who are responsible for criminal proceedings have to protect the rights and freedoms of citizens participating in criminal process. These include judges whose actions in the event of deviation from the requirements of procedural law, entail prosecution depending on nature and degree of public danger of committed act. Besides, damage caused to a person as a result of violation of his rights and freedoms in the proceedings is subject to compensation [5]. A citizen cannot enter into criminal procedural relations on his own initiative based on given provisions of legislation. Consequently, such initiative is given to officials who are responsible for criminal proceedings. In this case, the entry into criminal procedural relations of people who have independent and represented legal interest is carried out through procedure provided by the Code of Criminal Procedure to attract one or another participant in criminal proceedings [6]. Namely, if a person committed a crime and it was subsequently established, an exhaustive list of reasons for restriction of rights which was given in Article 221 of the Code of Criminal Procedure of the Republic of Uzbekistan, then he is involved in criminal case as a suspect, then as an accused and has become a defendant [7]. Whereas the entry of victim, civil plaintiff, civil defendant, legal representative and representative into criminal procedural relations is mediately. In cases if these people are involved by court in the process than a determination is made [8]. At the same time, criminal procedural status of a person who is involved in legal proceedings as a witness is determined by calling this person to testify as a witness. According to Article 65 of the Code of Criminal Procedure, any person who may be aware of any circumstances to be established in criminal case may be called as a witness to testify. However, it should be noted that data provided by participants in the process cannot serve as evidence in case if they are obtained from unknown source or from a source that cannot be established in course of criminal proceedings [9]. Therefore, it is becoming obvious that during interrogation of each individual participant in criminal proceedings, it is necessary to find out in what conditions he received and perceived data or information and establish other circumstances that seem insignificant at first sight, which may further affect the reliability of the evidence.

Each participant of criminal proceedings has certain rights that are aimed at ensuring that it fulfills procedural duties. Objective and truthful evidence can be given by a person if his right to testify is respected. Therefore, ensuring protection and guarantee of compliance with this right of trial participants is the main responsibility of a judge.

In this regard, an important role is assigned to the competence of a judge, priori of derivative of existing procedurally regulated procedure for conducting interrogation of persons during the trial.

As B. Akramkhodjaev noted correctly, when he investigated legal status of victim at stage of preliminary investigation, the process of conducting procedural or investigative action should be divided into four stages, namely, preparatory, explanatory, law enforcement and control and certification. He believed that lack of at least one of them would give rise to infringement of the rights and legitimate victim's interests [10]. It is difficult to disagree with the statement of scientist, and in our opinion, above mentioned

algorithm is relevant to the present. In addition, we believe that it is applicable by analogy, *inter alia*, to the procedure for conducting interrogation of all participants in criminal proceedings.

Thus, it follows from the contents of Article 64 of the Code of Criminal Procedure that persons responsible for proceedings are required to clarify the rights and ensure possibility to exercise these rights to suspect, accused, defendant, as well as victim, civil plaintiff, civil defendant and their representatives. At the same time, responsibilities assigned to participants and consequences of not fulfilling them should be explained to trial participants [11].

Word for word interpretation of stated norm from the court may cause reasonable doubts and understanding the absence of legislative requirement regarding explanation of rights and their provision in relation to witness at practice. According to Article 441 of the Code of Criminal Procedure, during the trial before interrogation begins, the witness should swear an oath and be warned of responsibility for refusing to testify and giving knowingly false testimonies [12]. From the point of view of theory, the existence of such legal precedent gives rise to discrepancy in norms of the Code of Criminal Procedure.

Along with this, the use of legal ignorance of individual participants in legal proceedings about their procedural status will not ensure successful consideration of criminal case in court in any case. The result of it will be distortions in testimonies of interrogated persons, which will lead to the loss of significant part of forensic information about the crime committed and perpetrators, as well as affect the growth of unsolved crimes.

If we take as a foundation the structure of procedural action that is worthy of attention developed by B. Akramkhodjaev in relation to the procedure for interrogating participants in criminal proceedings, according to current Code of Criminal Procedure, preparatory stage includes requirements that include determining the place of interrogation, procedure for calling for interrogation, and ascertaining the identity of interrogated, in what language is interrogated will give evidence, taking into account general rules during interrogation of witness and victim, respect for the interests of close relatives of defendant [13]. At the same time, in determining the identity of witness and victim, a judge must pay attention to the requirements of Article 115 of the Code of Criminal Procedure, which establish the circumstances in which it is impossible to interrogate participants in a trial.

The explanatory stage in interrogation is covered by requirements of Article 100 of the Code of Criminal Procedure, which states that after ascertaining the identity of interrogated the rights and obligations stipulated by this Code are explained to him [14]. An explanation of these rights and obligations is noted in the minutes of hearing [15]. The initiative of explanations of rights and obligations and designation of its forms is showed by a judge, who can verbally announce the content of articles or provide trial participants to read and familiarize themselves directly with the text of the Articles of the Code of Criminal Procedure. An explanation of the rights and obligations is a number of sequential actions of the court to provide legal information for participants in legal proceedings, peculiarity of which is to comment the rights and obligations for participants to understand content of competence, its purpose and destination. A guarantee of observing the indicated authorities by witness and victim in court hearing is their warning of responsibility for violation of procedural obligations [16] set forth in Articles 230-241 of

the Criminal Code of the Republic of Uzbekistan, with familiarization of the text of these criminal law norms. The explanatory stage also involves informing the witness and victim about inadmissibility of refusing to testify with reference to special circumstances [17]. At the same time, a judge should find out whether unlawful actions against the interrogated participant in proceedings were allowed by the persons responsible for criminal proceedings [18]. In addition, if witness or victim is a minor, then he, including his legal representative, adult close relative, teacher or representative of the victim, should be warned that the interrogation can be carried out only with their consent, taking into account the requirements stipulated by Article 121 of the Code of Criminal Procedure of the Republic of Uzbekistan[19].

Legal stage associated with interrogation of participant in criminal proceedings consists in observing general interrogation rules provided for in Articles 96-108 of the Code of Criminal Procedure and procedure regulated by Article 442 of the Code of Criminal Procedure by a judge. In particular, interrogation of each witness should be carried out in absence of unsolicited witnesses. At the same time, interrogated witnesses remain in courtroom and can leave it only with the permission of a judge. It is allowed to interrogate a minor witness at determination of judge in absence of defendant, when it is required to establish the truth in a case. The interrogation of defendant begins with the proposal of a judge to testify about the circumstances of the case known to him. The interrogation of victims, witnesses and experts begins in the same way. At any time during the trial, a judge has the right to ask questions from interrogated person and other participants who have already testified for clarification and supplement.

Control and verification stage of interrogation ends with compilation of court session minutes, the responsibility for conducting of which lies with presiding judge and his secretary. Minutes of the proceedings is maintained in accordance with the rules provided for in Articles 90-92, 426 of the Code of Criminal Procedure.

As it can be seen criminal proceedings are based not only on legal norms but also on moral standards. The first and second ones determine nature of procedural relations of trial participants and serve successful solution of tasks of criminal proceedings.

Consistent conduct of moral principles in criminal proceedings contributes to comprehensive, complete, objective studying of criminal case circumstances. The law takes into account the requirements of human morality.

In order to ensure truth of evidence the most important thing is psychological restructuring judges' attitude to trial participants. And to ensure that courts do not rely on coercive measures of providing fulfillment of procedural obligations of trial participants but they ensure fully the exercise of their rights and interests in accordance with the law.

It is considered that trial participant who feels that he is alone with criminal world, who feels unarmed and helplessness at threat to his life, or threat to his family and property will immediately begin to deny his true testimonies. If he does not give any incriminating evidence, then he will simply remain silent about the fact that is known to him.

Therefore, in criminal process factors should be stimulated that create conditions for trial participant to give true testimony. Giving true testimony is first of all citizens' moral duty, but this duty will remain a simple declaration if it does not rely on well-thought-out system for ensuring personal safety of trial participant.

At the same time motives of false testimony can be falsely understood sense of friendship, personal interest of participant in a trial (self-interest, envy, jealousy, etc.), kindred or other good relationships, desire to avoid burdensome duty of testimony, fear of discovering one's adverse actions, mutual responsibility, fear of revenge of trial participant or his close relatives, who is interested in outcome of the case, incitement.

It seems that psychological characteristics of interrogation of various participants in criminal process consists of a number of additional, consistent and interconnected court actions aimed at protecting bona fide participant of a trial from unlawful exposure to persons who are interested in a case in order to refuse giving false evidence by threat of his personal safety, including members of his family, as well as legitimate impact of authorized persons considering a criminal case of participant of proceedings who have negative procedural activity in order to give true testimony in a case.

Based on professional activity of a judge it is necessary to formulate the development of psychological qualities of heuristic abilities oriented towards development of heuristic abilities, including the ability to identify information from interrogated persons about circumstances of a case, including deep attentiveness, observation, insight, inquisitiveness, perseverance and consistency in achieving goal, as well as ability to get quickly into psychological contact with interrogated by showing interest in protecting legitimate interests of this persons, showing specificity and flexibility, reflection, empathy and self-criticism.

An important condition for success in working with any trial participant is judge's ability to assess psychologically correctly the attitude of interrogated person to all other trial participants and factual data about which he reports taking into account subjective attitude to the case under consideration.

In this regard, it is possible to distinguish the following main three stages of formation of participants testimony in legal proceedings.

At initial stage trial participant observes and perceives the event, phenomenon, facts of reality, human behavior, etc., which preceded the moment when criminal act was committed, either observes and perceives the event itself related to commission of crime or perceives the results of committed crime. Moreover, he may be an eyewitness of either all these events, or some part of them. We should not forget that interrogated person can observe and perceive objects of interest to the court, objects related to crime, as well as situation and conditions under which criminal act was committed. One interrogated pay attention to the facts themselves, while others - to significance of these facts. The first is interested in description, others are interested in explanation of what they perceived and observed. Value and volume of information perceived by trial participant depends on his observation and type of perception of reality facts: objective or subjective.

At the stage of information preservation trial participant remembers the events he perceives, facts of reality. Criminal act in trial participant minds arouse strong and deep feeling that can be associated with fear, danger, or other emotions that have negative orientation. Emotional state of a person who remembered the event can also have a positive orientation, depending on what is an attitude of trial participant to assessment of criminal act. It should be noted that the longer is the period after committing criminal offense, the less is amount of information preserved about this crime, unless trial participant fixed this information in diary, notes, etc.

At reproduction stage of information preservation trial participant contacts directly with a judge and is in psychological conditions when he should recall events, facts of reality related to commission of crime, identity of accused or victim, etc. A short duration of period since the day of crime was committed in this case is to the benefit of a judge because trial participant in these conditions can recall much more useful information than if consideration of this case began after a long period of time.

Moreover, procedural and psychological foundations of the work with participants in legal proceedings for production of their interrogation are:

1) Strict compliance with the requirements of criminal procedural rules governing the interrogation procedure;

2) Preliminary collection of information about psychological characteristics of trial participant through involvement of specialist - psychologist for effective interrogation by judge;

3) Preliminary collection of procedural and operational and search of information about case, analysis of materials of criminal case by a judge;

4) Planning for interrogation, including questions to be clarified taking into account psychological portrait of trial participant and ensuring the necessary conditions for successful interrogation (taking into account conflict situation and measures to overcome it using tactical and psychological techniques and evidence available in a case);

5) Effective use of methods of psychological contact (empathy, reflection) in order to form positive procedural activity at trial participant in the condition of observing four phases of procedural action;

6) Verification of interrogation of trial participant by comparing data presented by him with other evidences of a case based on peculiarities of particular stage of trial;

7) Skillful and careful use of psychological techniques of interrogation of trial participant by judge.

It should be noted that it is in trial stage when shortcomings and flaws of inquiry and preliminary investigation stage are revealed. At the same time, in trial itself, one still has to face judicial errors, since in practice illegal and unfounded sentences are recorded. That is why in criminal process there are institutions of appeal, cassation, supervision and reopening of cases due to newly discovered circumstances.

In this regard, the role of participant in legal proceedings is to contribute to establishment of objective truth by truthful testimonies. Realization by trial participant of this role will be a guarantee to ensure his rights and legitimate interests. Regarding to trial participant who has negative procedural activity, the result of his actions may be perjury or refusal to testify.

At the same time, judicial practice indicates that requirement of self-incriminating testimony, imposing on close relatives the obligation to testify infringes significantly their interests and leads to grave consequences, and on the other hand, affects negatively the solution of justice tasks.

Conclusion

A person is a subject to interrogation if he has an ability to:

- observe phenomenon, event and fact that is interesting for the court;
- keep in memory, captured information that is interesting for the court;
- spell out correctly phenomena, events, facts stored in memory of interest to the court, taking into account the fact that presented information corresponds to reality.

The absence of at least one of these signs prevent the interrogation of a person at any age (see Articles 81, 95-1 of the Code of Criminal Procedure)

The interrogation of criminal proceedings participant shall consist of four consecutive interconnected stages: 1) preparatory; 2) legal explanatory; 3) legal implementation; 4) control and certification;

After familiarizing criminal proceedings participants with procedural rights and obligations, a judge should also clarify the requirements of Articles 101-106, 119-121 of the Code of Criminal Procedure of the Republic of Uzbekistan;

Before applying tactical technique during interrogation, it is necessary to establish the level of procedural activity of criminal proceedings participant.

REFERENCES

1. Constitution of the Republic of Uzbekistan. Part II. December 8, 1992/ www.lex.uz
2. Constitution of the Republic of Uzbekistan, Part I. Article 18. December 8, 1992/ www.lex.uz
3. Law of the Republic of Uzbekistan "On Courts" Article 6. September 2, 1993 -XII (New edition is confirmed by Law of the Republic of Uzbekistan from December 14, 2000 № 162-II); Clause 2 Resolution of Plenum of Supreme Court of the Republic of Uzbekistan. May 23, 2014 № 07 "On court judgment" / www.lex.uz
4. Code of Criminal Procedure of the Republic of Uzbekistan. Article 15/ www.lex.uz
5. Code of Criminal Procedure of the Republic of Uzbekistan. Chapter 38. Instruction on procedure for making cash payments at the expense of state budget in compensation for harm caused to citizens or legal entities as a result of illegal actions (inaction) of state bodies or officials of these bodies, approved by Resolution of the Ministry of Finance, Central Bank, State Tax Committee, registered by the Ministry of Justice on January 12, 2002. № 1095 / www.lex.uz
6. Code of Criminal Procedure of the Republic of Uzbekistan. Part 2/ www.lex.uz
7. Code of Criminal Procedure of the Republic of Uzbekistan. Article 360-361/ www.lex.uz
8. Code of Criminal Procedure of the Republic of Uzbekistan. Article 54, 56, 58, 60,62/ www.lex.uz
9. Code of Criminal Procedure of the Republic of Uzbekistan; Clause 5, Part 1, Article 95-1; Clause 8 of the Resolution of the Plenum of Supreme Court of the Republic of Uzbekistan August 24, 2018 N24 "On some issues of application of norms of criminal procedure of legislation on admissibility of evidence"
10. Akramkhodjaev B.T. Ensuring the rights and legitimate interests of the victim at preliminary investigation: Abstract of dissertation. - M., 1992 - p. 10
11. Code of Criminal Procedure of the Republic of Uzbekistan; Article 435-437, Clause 3 of the Resolution of the Plenum of Supreme Court of the Republic of Uzbekistan December 19, 2003 № 17 "On practice of the applying laws by courts ensuring the suspect, accused the right to defense"/ www.lex.uz
12. Criminal Code of the Republic of Uzbekistan. Article 238,240/ www.lex.uz
13. Code of Criminal Procedure of the Republic of Uzbekistan. Article 96-99,114, 116. Clause 17 of the Plenum of Supreme Court of the Republic of Uzbekistan. May 23, 2014 № 07 "On court judgment"/ www.lex.uz

14. Code of Criminal Procedure of the Republic of Uzbekistan. Article 65-66, 54-55, 45-46/ www.lex.uz

15. Resolution of Plenum of Supreme Court of the Republic of Uzbekistan August 22, 1997 № 12 "On compliance by courts with procedural legislation at criminal proceedings in the first instance" / www.lex.uz

16. Code of Criminal Procedure of the Republic of Uzbekistan. Article 117, 271. Clause 16 of Resolution of the Plenum of Supreme Court of the Republic of Uzbekistan. May 23, 2014 № 07 "On court judgment"/ www.lex.uz

17. Code of Criminal Procedure of the Republic of Uzbekistan. Article 118/ www.lex.uz

18. Code of Criminal Procedure of the Republic of Uzbekistan. Articles 17, 95-1; Part 2. Article 26 of the Constitution of the Republic of Uzbekistan; Part 4 of Article 10 of the Law of the Republic of Uzbekistan from September 2, 1993 № 924-XII "On Courts" (New edition); p. 18 of the Resolution of Plenum of Supreme Court of the Republic of Uzbekistan from December 19, 2003 № 17 "On practice of application by courts laws ensuring suspect, accused of the right to defense"; subparagraph 1 p. 3 of Resolution of Plenum of Supreme Court of the Republic of Uzbekistan dated August 24, 2018 № 24 "On some issues of application of norms of criminal procedure legislation on admissibility of evidence"; p. 18 of the Resolution of Plenum of Supreme Court of the Republic of Uzbekistan from May 23, 2014, № 07 "On court sentence"; Articles 230-231, 234-235 of Criminal Code of the Republic of Uzbekistan; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, December 10, 1984 Adopted and open for signature, ratification and accession by UN General Assembly Resolution 39/46. The Republic of Uzbekistan has acceded to this Convention in accordance with the Resolution of the Oliy Majlis of the Republic of Uzbekistan of August 31, 1995 № 130-I. Entered into force for the Republic of Uzbekistan of October 28, 1995 / www.lex.uz

19. Code of Criminal Procedure of the Republic of Uzbekistan. Article 121. Clause 9 of the Resolution of Plenum of Supreme Court of the Republic of Uzbekistan August 22, 1997 № 12 "On compliance by the courts with procedural legislation in criminal proceedings in the first instance" / www.lex.uz