

COMBATING OFFENCES: CRIMINAL-PROCEDURAL, FORENSIC, ORGANIZATION AND TACTIC ASPECTS

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THE TACTICAL AND PSYCHOLOGICAL INFLUENCE OF THE INVESTIGATOR (DETECTIVE) ON PERSONS PARTICIPATING IN CRIMINAL PROCEEDINGS

Володимир Копанчук, Олег Кравчук, Олександр Новак, Юрій Туровець. ТАКТИКО-ПСИХОЛОГІЧНИЙ ВПЛИВ СЛІДЧОГО (ДЕТЕКТИВА) НА ОСІБ, ЯКІ БЕРУТЬ УЧАСТЬ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ. Викладено правові основи та перспективи розвитку криміналістики, судової психології та кримінального процесуального права в світлі правової

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реформи в Україні. Розглянуто особливості тактико-психологічного впливу слідчого (детектива) на осіб, які беруть участь у кримінальному провадженні. Надано на розгляд та обговорення загалу власна (авторська) методологія вирішення ряду проблемних ситуацій, які можуть виникнути у практичній діяльності працівника правоохоронних органів України. Обґрунтована необхідність ефективної співпраці працівників правоохоронних органів, спеціалістів у галузі криміналістики та судової психології з метою якісного та об'єктивного виконання завдань кримінального провадження, дотримання загальних засад кримінального процесу та покращення інноваційної політики України загалом. Авторами визначено та надано власний перелік правових позицій і техніку можливого протистояння процесуально-правовим прийомам та хитрощам підслідного. Надано методологічну основу щодо визначення під час допиту свідка або підозрюваного елементів брехні, обмови, промовки та навіювання. Розкривається значення та надається оцінка цим новелам в системі права, криміналістики, судової психології та кримінального процесу у цілому. Зроблені висновки та надані рекомендації щодо узгодженого застосування норм діючого законодавства у практичній діяльності слідчого, детектива та криміналіста. Привернуто увагу на необхідність подальшої наукової співпраці вчених, спеціалістів у галузі матеріального та процесуального права.

Ключові слова: *детектив, кримінальний процес, криміналістика, кримінальне провадження, норми права, психологія, слідчий, учасники.*

Relevance of the study. The influence on the psyche of persons involved in the case is one of the integral elements of the activity of representatives of the law enforcement system of Ukraine, in particular the investigator (detective). Theoreticians and practitioners of the criminal process and criminology often ignore this issue in silence, and sometimes even express an opinion about the inadmissibility of any mental influence on the part of a law enforcement officer. From our point of view, the impossibility of such an opinion is obvious. Because the investigator (detective) constantly influences people with his authoritative prescriptions, educational measures, procedural means of coercion. Without this, it is impossible to solve the tasks of criminal justice. The difficulty, in our opinion, is to determine which forms of influence are permissible, legal and which are mental violence, which is incompatible with the principles of the criminal process. This is impossible without strict compliance with the current legislation of Ukraine, in particular the norms of the Constitution of Ukraine [1] and legality procedures, requirements and institutions of substantive and procedural law. This, in our opinion, is the relevance of the investigated problem.

Recent publications review. The activity of detection, investigation and prevention of criminal offenses is related to solving tasks that require knowledge not only of criminology, criminal law and process, but also of psychology. Criminology and forensic psychology deal with the study of psychological patterns underlying the behavior of participants in criminal proceedings and the development of psychological recommendations used in the fight against crime. The analysis of the scientific and theoretical literature showed that scientists and practitioners (V. Tatsy, V. Tertyshnyk, M. Pogoretsky, L. Udalova, P. Tsymbal, etc.) repeatedly investigated the issue of procedural – legal activity of employees of pre-trial investigation bodies in general and their individual aspects in particular. However, consideration of the specifics of the tactical and psychological influence of the investigator (detective) on persons participating in criminal proceedings requires its own detailed research and analysis.

The article's objective. The article deals with the considering of separate scientific and practical issues of forensic tactics and the related psychology of pre-trial investigation, which took place in practice; revealing the author's position in the interpretation of scientific and theoretical issues of the tactical and psychological influence of the investigator (detective) on persons participating in criminal proceedings, as well as with outlining the legal solution of issues that arise in the practical activities of employees of pretrial investigation bodies, psychologists, for qualitative and objective performance of the tasks of criminal proceedings, compliance with the law when establishing circumstances that are subject to proof in criminal proceedings, and, as a result, on improving the innovative legal policy of Ukraine in general.

Discussion. Legitimate influence differs from mental violence in that the person who is influenced has free will in choosing one or another position. With legitimate mental influence, specific actions are not dictated, for example, indications of this or that content are not required, but a person develops a correct position, a conscious attitude to his duties. This mental influence indirectly leads to the choice of a certain line of behavior (the voluntariness of the choice distinguishes, for example, an interrogation aimed at obtaining truthful testimony from seeking recognition).

In the case of violence, a person is significantly limited or completely deprived of the opportunity to choose a line of behavior. It is determined by the alternative, which is set by the person conducting the investigation. At the same time, threatened harm becomes the main motivator. The subject sees the only way to avoid the threat in the execution of what is dictated by the investigator (detective).

If, for example, the suspect is told that if he pleads guilty he will be arrested, and if he confesses he will be released, then regardless of the reality of such promises and threats, the actions of the investigator (detective) have the character of mental violence. Violence is also a promise to provide some benefits or to cancel various oppressions imposed on a person, as a reward for the desired behavior of the investigator (detective).

At the same time, it is not necessary for demands to be accompanied by threats or promises. The very situation of the investigation may turn out to be such that a person sees only one way out of the situation, and in a state of willpower decline and confusion, people are sometimes more susceptible to the motives of the present time, which turn out to be stronger than individual ideas about the future.

Sometimes any influence or influence of one person on another is called suggestion. This is not accurate. Suggestion occurs when the subject perceives a certain idea without criticism and follows it automatically. For a domestic criminal process, such a form of influence on people is hardly acceptable. By reducing or turning off conscious volitional control on the part of the persons involved in the case, the investigator (detective) always risks pushing them to an objectively incorrect course of action, which, due to enthusiasm or prejudice, only appears to him to correspond to the truth, without actually being so.

Legitimate influence should induce a person first of all to consciously revise his position, which is contrary to public interests and the goals of justice.

The transition from opposition to facilitation, from closure to openness, from lies to the truth is always associated with great psychological difficulties. Therefore, we believe that the investigator (detective) is obliged to help interested persons to do this, to remove internal "brakes" that prevent this, using legal methods of mental influence.

The domestic criminal process offers the method of persuasion as the main form of influence. But this by no means turns the investigator (detective) into a moralist preacher who acts only by persuasion and persuasion. The investigator (detective) usually not only assures, but also convinces a person, but this task is more complex and wider in scope and is carried out in the investigation process only partially, to the extent necessary to establish the truth in the case.

To convince a person to testify truthfully or to perform the necessary actions means to prove to him the senselessness and harmfulness of another line of behavior. However, it does not follow from this that the one who conducts the investigation must first of all prove that this person has committed a criminal offense, because the suspect may be innocent of the crime committed, or not exposed by a sufficient amount of evidence, but the insufficiency of the evidence that exposes (most often in relation to suspects), of course, does not eliminate the possibility and necessity of obtaining truthful testimony, inclination to conscientious behavior during the investigation.

Of course, conviction is most effective when the offense is fully proven, guilt is indisputable, and there is overwhelming and irrefutable evidence. In this case, a person confirms the obvious truth for logical reasons.

However, not always the presentation of evidence, the totality of which convinces others, is also perceived by this person. She may consider that these evidences are not sufficient, no matter how weighty they may seem to the investigator (detective) and no matter how they do not meet the legislator's requirements regarding propriety and admissibility, which are set forth in the Criminal Procedure Code of Ukraine [2]. Therefore, it is necessary to look for other evidence that can convince this person, or to interpret the existing evidence more convincingly. Persuasion most often fails to achieve its goal simply because the true meaning of the evidentiary facts is not explained, not explained clearly enough.

It is not always necessary to try to "put" a finished idea into the person we are persuading. Sometimes it is advisable to express only an assumption at first, then confirm it with full-fledged arguments. A person gradually introduced to this idea perceives it as the result of his own understanding, and not a view imposed from the outside.

At the same time, all objections should be confirmed. Be ready to refute them. A person who is persuaded, seeing that his arguments are not refuted by the investigator (detective), may

think that the latter doubts the strength of his provisions. Because persuasion depends not only on the quality of the argument, but also on the moral character of the one who persuades.

Sincerity of the investigator (detective), his conviction in the rightness of the views that are being defended, interest in establishing the truth (and not in obtaining one or another specific testimony) are very quickly recognized by the subject due to his heightened sensitivity, which is due to his position.

To be successful, the investigator (detective) does not need to master the techniques of acting, only to play a certain role. Too obvious desire of the investigator (detective) to convince and the use of cheap acting techniques for this purpose can only hinder the achievement of the desired results.

When a person is presented with incontrovertible evidence and when he cannot offer serious counterarguments, the task of persuasion is naturally simplified. In such situations, the investigator (detective) does not need special ingenuity and art. But often the investigator (detective) has only a small amount of evidentiary facts at his disposal, but due to their tactical and psychological correct use, the suspect, in the absence of good will, gives out items that he is hiding, or reveals the truth.

The real skill of the investigator (detective) is manifested precisely when, having a sum of facts that allows interested persons to continue resistance, but using them tactically correctly, leads such persons to the conviction of the futility of resistance. However, this or that method, although it is capable of bringing success in individual cases, encouraging correct behavior, but it can also have the opposite effect. Therefore, it is unacceptable and should be excluded from the means of the investigator (detective).

This does not mean that the investigator (detective) does not have the right to create and use tactical advantages, to use certain psychological tricks to find out the truth. In this case, the application of specific legal methods is meant, for example, the factor of suddenness. Unpreparedness of the suspect to lie. His lack of information regarding the collected evidence and information available to the investigator (detective) and other similar measures.

What is the basis of the action of such methods? The state of the unknown is almost always more difficult than the awareness of a clearly visible and understandable danger. When a person does not know what to fear, what must be done to face the troubles that threaten, it is natural for him to assume the worst. When the facts, no matter how shocking they are, are known, then a person acquires the opportunity to resist or adapt to them. Uncertainty of the situation pushes a person towards events, she tries to force them, revealing the truth, which may be undesirable for her in a soberer assessment.

In these cases, when making a decision, a person is mistaken about the amount of evidence and their weight, a legal error is assumed regarding the operation and interpretation of certain norms of the Criminal Code of Ukraine [3]. Investigative practice is full of examples of the correct use of these mental laws.

Speaking about the means used by the investigator (detective), sometimes arguments addressed to feelings and arguments addressed to consciousness are considered in isolation. Such an opposition is wrong from all points of view. By influencing only the feelings of the interrogated, the investigator (detective) risks receiving false testimony under the influence of, for example, fear, anger and other negative emotions. Addressing only the consciousness of the suspect, suppressing his moral emotions, the investigator (detective) can also push the interrogated to give false testimony under the influence of selfish calculation. Therefore, influencing the course of the suspect's thoughts with arguments that should lead him to the right decision, it is also necessary to awaken emotions that strengthen his intentions in this.

The investigator (detective) should strive not only to influence the nature and content of the emotions of the participants in the case (inducing desirable emotions and neutralizing negative ones), but also to regulate the emotional tone.

If excitement threatens correct behavior, disorganizes the course of mental processes, it is necessary to defuse the atmosphere, relieve tension, distract or entertain the interrogated person, etc. If a person during procedural actions is withdrawn and unavailable, calm and self-confident, sometimes it is advisable to change his state to a more emotional one, even through an emotional outburst or explosion. But it is necessary to achieve this not by mental pressure from the outside, but by penetrating into the inner world of a person, by awakening memories of emotionally significant circumstances for him (biographical facts, family, past images, etc.).

Practice convincingly proves that an appeal to the feelings can lead to the fact that a person will testify even when the evidence alone would be powerless. But at the same time,

playing on base feelings, using superstitions, ignorance, superstitions, etc., is unacceptable, if even in one or another situation it can contribute to temporary success. As we noted, this method of action is in irreconcilable conflict with the tasks of criminal justice [2], with the educational function of the investigator (detective).

The investigator (detective) needs to master the technique of strengthening and weakening the emotional tone not only because it allows him to induce the desired external action, but also because it makes it possible to cause a certain experience in a person. Bringing the interrogated to sincere repentance, receiving truthful testimony from him, the investigator (detective) simultaneously takes the first step towards his correction and re-education.

The educational influence is often hindered by a moral and psychological barrier built by past experience, antisocial personality orientation. The investigator (detective) must overcome it, but for this most often it is necessary to find workarounds, using the positive qualities that every person has: it is necessary to reveal, actualize them and, on this basis, make it accessible to educational influence.

One of the types of mental influence is the urge to imitate. By calling to imitate positive images, which are given a known emotional value, it is often possible to incline a person to the desired behavior.

It is known how the investigation is facilitated when one or more persons interested in the case give truthful testimony. After them, others usually take the path of frank confession. Voluntary compensation for damages by one suspect very often encourages others to do the same. Communication with a criminal who has repented can play a positive role, and, on the contrary, it is known what a chain character is the refusal of previously given testimony. Therefore, it is necessary to create conditions that promote a certain positive influence and eliminate unwanted influences.

The correct psychological characterization of the relationship between the investigator (detective) and the persons involved in the case is important. Such relations have a dual nature, based on two seemingly opposite principles: psychological contact and psychological struggle. However, this does not mean that the investigator (detective) should apply two different approaches to the persons involved in the case, depending on their position.

Psychological contact cannot be understood as a relationship of mutual concessions, indulgences and favors, just as psychological struggle cannot be considered as a war with the suspect.

In the criminal process, they fight not with the suspect and the accused as individuals, but with individual manifestations of "backward" consciousness and low motivations, namely: for the rest of the best traits in this individual. The investigator (detective), in fact, participates in the struggle that takes place in the inner world of a person.

Psychological contact and psychological struggle are different sides of the individual-psychological approach, which always involves humanity and sensitivity in relations with persons involved in the case.

The feeling of fear, which both the criminal and the victim can feel during the commission of a criminal offense, and during interrogation, both the guilty and the innocent, has a particularly negative effect. Fear not only dulls the memory, but also suppresses the entire psyche of a person, affects his intellectual activity. It often reduces the will, moral self-control and critical abilities, prevents a correct assessment of the situation, makes a person more accessible to unwanted influences. Without exaggeration, we can say that the fear that, for one reason or another, is instilled in people by the persons conducting the investigation – carrying out the proceedings, is the biggest obstacle to finding out the truth. It is the basis of most motives for false testimony. That is why the legislation of Ukraine prohibits any threats and other similar measures, requires clarification and ensuring the rights of the participants in the process [2].

It is known that fear increases suggestibility, which to one degree or another is characteristic of everyone. Susceptibility increases with a general unfavorable environment, affective states, overfatigue, exhaustion of the nervous system, a dependent position of a person (that is, in conditions in which the subject may be under investigation). Feeling defenseless, he is particularly susceptible to suggestion. The excitement and tension felt during the interrogation can reach such a degree and exert such an influence on the interrogated person that he cannot always correctly explain his behavior after the interrogation. The possibility of inducing false testimony by the interrogator also increases during long interrogations and when the suspect is tired.

It is also necessary to take into account the high level of psychological influence exerted on a person by deprivation of liberty (which in itself is an objective factor). A change in the usual way of life, moral suffering and physical deprivation, forced inactivity, unknown future, lack of contact with loved ones and relatives, as well as generally limited opportunity to communicate with people make a heavy impression on a person. An arrest can cause particularly serious mental trauma to an innocent person. The explanation of many cases of self-defamation should probably be sought in the psychological influence of the factor of deprivation of liberty [4].

In this regard, we emphasize that detention, including short-term imprisonment (as well as other means of procedural coercion), is only a coercive measure against the perpetrator's evasion of responsibility and the commission of other offenses, and not a means of influence in order to obtain the desired evidence.

In the investigation process, one of the central places belongs to measures that prevent, detect, expose and refute lies, because they are the main obstacle to establishing the truth in the case.

It is commonly thought that there is nothing more random and capricious than a lie. However, this idea is wrong. A lie, like any kind of thinking based on a different principle, has its own forms, rules and techniques. A person who lies always resorts to certain laws of thinking, to certain forms of logic.

There are many types of lies [5, p. 35]. There is a lie that is completely made up. It is rare because it is easily revealed. The most common is an incomplete lie, when the liar processes the truth, distorting it in his own way. At the same time, intending to instill confidence in his words, he often deviates from real events, distorting them only as necessary. Yes, false testimony most often belongs to this type. They are fictitious only in that part, the truthful coverage of which is undesirable for the interrogated. To lie means to replace the truth with some fiction that is significant for the liar and to replace the facts that really happened with those that the liar would like to portray to his listeners. Lies often have a chain character: one lie gives rise to another and requires a series of interrelated facts to be reconciled with it.

Therefore, false statements often directly or indirectly contradict the part of the representations that correctly reflects reality. That is why it is often advisable not to interrupt the lie, to allow a person to contradict his own statements or firmly established facts, and in this way to deprive him of the opportunity to bring them into line with a more successful explanation or to adapt to them another, more difficult to refute false version. However, it is unacceptable to provoke a lie.

Presenting his argumentation in the form of a logical chain of judgments, the interrogate, if he is lying, proceeds from his own false statements or draws false conclusions. Having fixed this system of evidence, it is easier to show its viciousness and to convince him of the impossibility of the unargumentability of his chosen position.

In general, we recommend that you avoid hasty judgments about the falsity of certain testimonies, rush to refute them, express doubts or deny everything said without sufficient grounds. Sometimes it is useful to create the impression of complete trust in what was said, than to encourage interested persons to create false evidence, to use their unpreparedness for new lies [4].

Having made a false statement once, a person tries to stick to it in the future, but the details of the story can be forgotten, replaced by other details, and supplemented with new details. Therefore, the discrepancy between the reports, their inconsistency in both essential and secondary details should be alarming.

In the mind of the person who lies, two parallel events coexist at the same time: one – which really happened and which he wants to hide; the other is fictional, about which he, on the contrary, intends to tell. Thus, it is as if he has to "exorcise" from his memory what happened (and therefore remembered it well), and remember what did not happen, but what he only invented (and therefore it is more difficult to remember); one has to maneuver between the truth that cannot be spoken, the truth that can be spoken, and the lie that must be used to replace the hidden truth. At the same time, the poorer misconception is inhibited by a more vivid competing image that actually took place. At the same time, there is a struggle between the intention to lie and the natural truthfulness of a person (it is easier to tell the truth than to invent lies). That's why a liar always risks speaking out.

A slip of the tongue is objectively correct information that the interrogate may be interested in concealing, which got into his testimony as a result of his misunderstanding of the

meaning of the reported information or as a result of his uninhibited reaction to the question ("quick question – quick answer"); sometimes it is a careless, unintentional remark or statement.

It is necessary to distinguish a slip of the tongue from a slip of the tongue – an accidental factual error. A pleading is subject to correction, and a pleading which contains implied admissions of certain facts and is properly recorded may be probative. It is especially important in a tactical sense for obtaining detailed evidence on issues that were initially managed to be ascertained indirectly. Guilty awareness is revealed in the utterances, i.e. such knowledge of the circumstances and the course of the event, which a person can possess only under the condition of involvement in the offense. However, when evaluating such statements, the possibility of obtaining information from other sources (other people's stories, rumors, reports in the press, radio and the Internet) must be excluded.

In order to establish the truth, ignorance of those circumstances and details that should be known and could not be forgotten, or the person's testimony is true, may also be important. Such negative circumstances indicate the falsity of testimony (when, for example, a person is not able to correctly describe the place of the event and the mechanism of the event in which he was allegedly a participant, report vivid facts that allegedly happened in his presence, recognize a person or an object that should be his well known).

Ignorance is exposed as a lie if the statements of a given person imply the necessity of certain knowledge that he should have acquired in the past (professional training, language skills, knowledge of the settlement and the events that took place in it, acquaintance with members of a certain collective, etc.).

Close to this is also the inability to perform any actions or the impossibility of performing them in the order and under the conditions that the interrogated person speaks about. Such actions as verification of testimony on the ground, presentation for identification, investigative experiment, clearly demonstrate the impossibility of false statements, forcing a person to tell the truth.

Although a lie may have the value of one of the indirect evidences, it is not always due to the fact that the given person has committed a crime. It can be a defensive reaction of the innocent. The fear of undeserved accusation and punishment often pushes the suspect to deny valid facts and false statements, in which he looks for means to protect himself from false suspicions.

Even a person who is innocent of a criminal offense and who is beyond suspicion, in many cases does not give truthful testimony, distorts the facts, fearing an unfavorable coincidence of circumstances and the possibility of their unfavorable interpretation in relation to him by the detective (investigator).

The reaction to the presented or alleged accusation leads to the fact that the interrogated person consciously, and sometimes unconsciously, tries to minimize his role in the investigated event, minimize guilt, hide the most shameful acts and motives, portray himself in a more favorable light, pass himself off as a victim. In the event of an unfavorable coincidence of circumstances, by the executor of someone else's will or by a person whose actions are caused by the unjust actions of other people. This is especially characteristic of the part of testimony that highlights the subjective side of a criminal offense, when it comes to the causes and motives of the offense, the occurrence and formation of intent, and the prediction of the results of criminally illegal actions.

A similar tendency, which is sometimes caused by an involuntary desire to get rid of unpleasant memories, to push them out of consciousness, leaves an impression on the presentation of the actual circumstances of the case. Therefore, it is psychologically justified for the person being interrogated to "tolerate a half-confession" for a certain time, without forming evidence, postponing the receipt of truthful explanations on these issues to a later time.

Conclusions. The influence on the psyche of persons who take part in the case is one of the integral elements of the activity of the investigator (detective). The law enforcement officer constantly influences people with his authoritative orders, educational measures, and means of procedural coercion. Without this, it is impossible to solve the tasks of criminal proceedings, which are defined by the legislator in Article 2 of the Criminal Procedure Code of Ukraine [2]. The difficulty, in our opinion, is to determine which forms of influence are permissible, legal, and which of them are a manifestation of mental violence, which is incompatible with the principles of the criminal process.

Considering the presence of shortcomings in this area of procedural legal and forensic

activity, we consider further research of the appropriate direction to be relevant, because the latter will create prospects for theoretical and practical work and contribute to the resolution of problematic issues in this direction.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The authors of the article outline the legal foundations and prospects for the development of criminology, forensic psychology and criminal procedural law in the light of legal reform in Ukraine. The peculiarities of the tactical and psychological influence of the investigator (detective) on persons participating in criminal proceedings are considered. The author's own (author's) methodology for solving a number of problematic situations that may arise in the practical activities of a law enforcement officer of Ukraine is presented for consideration and discussion. The need for effective cooperation of law enforcement officers, specialists in the field of criminology and forensic psychology in order to qualitatively and objectively perform the tasks of criminal proceedings, comply with the general principles of the criminal process and improve the innovative policy of Ukraine in general is substantiated. The authors defined and provided their own list of legal positions and techniques for possible opposition to procedural and legal techniques and tricks of the subject. A methodological basis for determining the elements of lies, slander, hearsay and suggestion during the interrogation of a witness or suspect is provided. The significance and evaluation of these short stories in the system of law, criminology, forensic psychology and the criminal process as a whole is revealed. Conclusions were made and recommendations were given regarding the coordinated application of the norms of the current legislation in the practical activities of the investigator, detective and criminalist. Attention was drawn to the need for further scientific cooperation of scientists, specialists in the field of material and procedural law.

Keywords: *detective, criminal process, criminology, criminal proceedings, legal norms, psychology, investigator, participants.*