

Interrogation tactics with an interpreter

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Abstract. In holding an investigation in relation to or with the involvement of persons, who do not know or insufficiently know the language of criminal proceedings, it becomes necessary to involve an interpreter in the crime investigation procedure. However, the contemporary investigative theory and practice take into account only one situation, namely the monolingualism of parties to a criminal proceeding. The situation when the investigator and his/her procedural opponent are fluent in different languages is still overlooked by our today's researchers. The article examines features of the influence of the need to use an interpreter on the interrogation from the point of view of information interaction between the parties. Within the framework of this research, it was substantiated that during the interrogation involving an interpreter, additional tasks, that are not characteristic of interrogation in its classical sense, arise. The groups of communication features of interrogation with the involvement of an interpreter, generated by the difference in the language system, the lack of control on the part of the investigator over the transfer of information between the interpreter and interrogated person, as well as a sharp decrease in the range of tactical techniques suitable for use, were identified. It is proposed to divide tactical techniques during interrogation involving an interpreter into four groups depending on the need to explain the essence of them to the interpreter, as well as the need to prepare an interpreter to participate in their implementation. The article concludes the influence of an interpreter on the tactics of investigative actions, if necessary, to involve him/her to guarantee the linguistic rights of the parties to criminal proceedings, and also offers recommendations for overcoming the tactical difficulties that arise during interrogation.

Keywords: law enforcement, legal proceedings, language barriers, translation, interpretation

1 Introduction

The Russian Federation is a state in which more than 190 nationalities and ethnic groups live and who speak 160 languages. However, the state language of the Russian Federation is Russian [1].

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The obligation to use the Russian language as the state language in the Russian Federation is determined by the law “State Language of the Russian Federation” [2], the law of the Russian Federation “Languages of the Peoples of the Russian Federation” [3], other federal laws and other regulatory instruments of the Russian Federation.

In accordance with Article 3 of the federal law “State Language of the Russian Federation” “1. The state language of the Russian Federation is subject to compulsory use: ... 4) in constitutional, civil, criminal, administrative proceedings, proceedings in arbitration courts, proceedings in federal courts, proceedings and proceedings before justices of the peace and in other courts of the constituent entities of the Russian Federation.”

The Criminal Procedure Code of the Russian Federation [4] defines the language of criminal proceedings as follows: “Criminal proceedings are conducted in Russian, as well as in the state languages of the republics of the Russian Federation. In the Supreme Court of the Russian Federation, courts of cassation of general jurisdiction, courts of appeal of general jurisdiction, military courts, criminal proceedings are conducted in Russian” (Part 1 of Article 18 of the Code of Criminal Procedure of the Russian Federation). This provision on the language of legal proceedings is considered as one of the principles of criminal proceedings.

In addition, the Code of Criminal Procedure of the Russian Federation contains a rule according to which parties to criminal proceedings, who do not know or insufficiently know the language, in which criminal proceedings are conducted, shall be explained and guaranteed the right to make statements, give explanations and testimonies, make petitions, make complaints, study the criminal case files, speak in court in their native language or another language that they speak, and also use the help of an interpreter for free (Part 2 of Article 18 of the Criminal Procedure Code of the Russian Federation).

Article 59 of the Code of Criminal Procedure of the Russian Federation defines an interpreter as a person who is involved in the cases provided for by the Criminal Procedure Code of the Russian Federation to participate in criminal proceedings. This article of the Criminal Procedure Code of the Russian Federation assumes only one requirement for the interpreter, namely to be fluent in the language, the knowledge of which is necessary for translation.

The need to guarantee the linguistic rights of parties to criminal proceedings, who do not know or insufficiently know the language of criminal proceedings gives rise to organisational and tactical problems in carrying out investigative activities.

Other countries, where representatives of different nationalities live, also face the problems of guaranteeing the language rights of parties to criminal proceedings. Thus, according to [5], 21% of US residents do not use English as their main language of communication. About a quarter of people from this group describe their knowledge of the English language as “very poor”.

2 Methods

Questions of tactics, psychology and ethics of interrogation of witnesses, victims, suspects and accused persons were the subject of focus in domestic (Soviet and modern Russian) forensic studies. Suffice to name such authors as Arotsker [6], Bogomolova [7], Grishina [8], Dospulov [9], Ekimovskaya [10], Porubov [11], Protasevich [12], Skichko [13], Soloviev [14], Sycheva [15] and others.

However, some questions of holding interrogation were considered by all authors without taking into account the linguistic component of that investigative action, as if the Russian Federation (and earlier the Soviet Union) were a mono-national country. Under closer examination, it turns out that if it is necessary to carry out an interrogation involving an interpreter, the characteristics of the interrogation change significantly, which is

manifested in the fact that the information coming from the investigator to the interrogated person takes a different linguistic form within the framework of a different extra-linguistic context. Conversely, the information coming to the investigator loses the extra-linguistic context when the linguistic form is changed. Moreover, the communication itself (its substantive side) between the interrogated person and the interpreter is not controlled by the investigator in any way.

Thus, it can be argued that the investigator, during interrogation involving an interpreter, has three additional challenges that are not typical of interrogation in its classical sense:

1. Establishing information exchange with the interrogated person in circumvention of the interpreter's information channel;
2. Exercising control over information exchange between the interpreter and interrogated person.
3. Guaranteeing minimisation of the loss of evidentiary information arising as a consequence of the need to involve an interpreter in the interrogation.

In our opinion, it is quite possible to solve these problems, since the channel of verbal interaction between the investigator and interrogated person is not the only one.

It is known from the provisions of modern psychology [16] that up to 55% of information is transmitted through non-verbal means, 38% of information is transmitted with phonetic means of language (primarily intonation), and only 7% of means of communicative interactions are provided through semantic means language. Thus, the investigator, during interrogation involving an interpreter, retains the ability to use about 93% of the communicative information. This information can be directly perceived by the investigator from the interrogated person, evaluated and compared by the investigator with the verbal information received from the interpreter.

In addition, the investigator has the ability to control the interpreter's behaviour during interrogation by his/her non-verbal manifestations.

3 Results

Let us consider the tactical features of the involvement of an interpreter in investigative actions by the example of the most common investigation procedure, namely interrogation.

Interrogation at the preliminary investigation is a complex set of cognitive and certifying operations provided for by the criminal procedure law which are carried out by the investigator in the criminal cases in his/her proceedings. The purpose of the interrogation is to obtain and consolidate testimony about the circumstances that are relevant to the case. In the course of performing cognitive operations, the investigator applies scientifically developed and recommended techniques, encourages the interrogated person to testify about the circumstances that are directly or indirectly related to the event being investigated. The investigator perceives the information provided, records it in the manner prescribed by law so that in the future this information can be used as evidence in a criminal case.

In the case of an interrogation involving an interpreter, the information exchange between the investigator and interrogated person is radically changed; there will be an intermediate link, an "intermediary" appears, whose function becomes the transformation of speech information. A major challenge lies in the fact that different language systems are never identical, as a result of which, during translation, either part of the information is lost, or additional information appears that is missing in the original utterance. If, from the point of view of translation theory, such a situation is typical, then in relation to the area of criminal proceedings, the part of information lost during translation leads to the loss of evidentiary information, and the excess information resulting from the translation is

generated by the interpreter; i.e. it goes beyond the informational picture of the circumstances investigated in the framework of the investigation of a criminal case.

Another difficulty is that the interrogated person and interpreter have the opportunity to exchange information in a language inaccessible to the investigator, as a result of which the investigator cannot control the information exchange through the “interpreter” – “interrogated person” channel.

The third challenge lies in the fact that the tactics developed by forensic science to ensure the most rational way of actions of the investigator in carrying out an investigative action, were created for the direct communication between the investigator and interrogated person speaking the same language.

Since, in the context of interrogation involving an interpreter, the possibility of the investigator’s influencing the interrogated person by means of direct speech influence is significantly reduced, the whole complex of tactical techniques, that the investigator can use, is radically changed.

In forensic science, there is a division into four groups of tactics during interrogation involving an interpreter [17].

The first group of tactics assumes the possibility of using them without any preliminary training of the interpreter, without first explaining to him/her the essence of them. This is possible when the main element of influencing the interrogated person is the logic of comparing the testimony of the interrogated person and reality. In this case, the interpreter translates the semantic part of the investigator’s statements, which does not require any additional skills, abilities or actions from the interpreter.

Also, the first group includes some tactics of conditional emotional impact. Despite the fact that such tactical techniques affect the emotional sphere of the interrogated person, they are based on a predominantly logical conviction.

The second group of tactical techniques during interrogation involving an interpreter includes tactical techniques, the possibility of using which depends on a preliminary explanation of their essence to the interpreter. This group includes tactical techniques based on the principles of emotional and psychological impact. Such tactical techniques as “indirect question” (sometimes this technique is called “distraction”), “sudden question”, “forced pace”, “slow pace” can be used as an example.

The third group of the considered classification of tactics includes tactics specially designed for interrogation involving an interpreter. The participation of an interpreter in the investigative action presupposes the possibility of using the interpreter himself/herself to achieve tactical goals by the investigator. As an example, we can cite the spatial arrangement of the investigator, interpreter and interrogated person in the investigator’s office. Depending on the spatial set-up of those persons, the non-verbal psychological impact on the interrogated person may change.

Finally, the fourth group of tactics associated with interrogation involving an interpreter includes tactics that cannot be applied due to a third person during interrogation, in this case, an interpreter. This is a group of tactical techniques aimed at establishing psychological contact between the investigator and interrogated person on the basis of their temporary rapprochement and isolation from the outside world. Such techniques are implemented in the form of a one-on-one conversation, without the presence of strangers. In this regard, the presence and active participation of an interpreter during interrogation violates the confidential atmosphere.

4 Conclusion

Thus, the following conclusions can be drawn. When investigating crimes, the need to secure the language rights of parties to criminal proceedings is still overlooked by forensic

scientists. The involvement of an interpreter in the investigation procedure primarily influences the tactics of the investigative actions. By the example of the production of the most common investigative action, such as interrogation, the pronounced specificity of tactical techniques, that arise as a result of the interpreter's involvement in the investigative action, can be considered.

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