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FEATURES OF FORMATION AND DEVELOPMENT OF THE INVESTIGATIVE ACTIONS CONNECTED WITH QUESTIONING

Article is devoted to questions of a ratio of the criminal proceedings, criminalistics and operational search activity which influenced formation and development of the investigative actions connected with questioning. Formation of procedural provisions of inquiry and tactics of its carrying out is impossible without interaction, interdependence and interpenetration of criminal proceedings, criminalistics and operational search activity. As practice shows, the use of the results, received during the operational search activity, in proof on criminal cases promotes the effectiveness of inquiry.

Article analyses existing and modern criminal procedure legislation, that formulatesproposals for improvement of the national legislation.

On the basis of the conducted research authors come to a conclusion that the criminalistics quite often is in the lead in research and development, which then are transformed to the legal procedure and to science of criminal procedure law. The history of the domestic criminal procedure legislation and criminalistics brightly highlights this picture. As a result of interaction, interdependence and interpenetration of criminal proceedings and criminalistics procedural emergence of such investigative actions connected with obtaining evidences as face-to-face interrogation, presentation for identification, check and specification of indications on the place, an investigative experiment, deposition of evidences became possible. And these investigative actions "detached" from interrogation. In too time in spite of the fact that the specified investigative actions are independent, their production is possible only after interrogation. Besides, for increase in guarantees of legality, ensuring protection of the rights and the interests of the persons who are involved in criminal proceedings and also the effectiveness of investigation it is necessary to regulate the provisions reflecting the procedure of receiving explanations in the Code of Criminal Procedure of the Republic of Kazakhstan.

Laws of the Republic of Kazakhstan, the Criminal Code of RK, the Code of Criminal Procedure of RK and works of the known scientific protsessualist and criminalists of Kazakhstan and foreign countries makes scientific and methodological basis.

Key words. Obtaining evidences, investigative actions, investigation, investigator, criminal prosecution, proof, investigative experiment, criminal process, operational-search activity, confrontation

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Жауап алумен байланысты тергеу әрекеттерінің қалыптасуы мен дамуының ерекшеліктері

Мақала жауап алумен байланысты тергеу әрекеттерінің қалыптасуы мен дамуына әсер ететін қылмыстық процестің, криминалистика және жедел-іздестіру қызметінің арақатынасы мәселелеріне арналған. Жауап алудың іс жүргізу ережелерін және оны жүргізу тактикасын қалыптастыру қылмыстық процестің, криминалистика мен жедел-іздестіру қызметінің өзара әрекеттестігі, өзара тәуелділігі мен өзара байланысынсыз мүмкін емес. Тәжірибе жедел-іздестіру

қызметі процесінде алынған нәтижелерді қылмыстық істер бойынша дәлелдеуде пайдалану жауап алудың тиімділігіне ықпал ететінін куәландырады.

Мақалада бұрын қолданыста болған және қазіргі заманғы қылмыстық іс жүргізу заңнамасы талданып, соның негізінде ұлттық заңнаманы жетілдіру жөніндегі ұсыныстар тұжырымдалды.

Жүргізілген зерттеулер негізінде авторлар криминалистика зерттеулер мен әзірлемелерде жиі көш бастап, кейін іс жүргізу нормаларына және қылмыстық іс жүргізу құқығы ғылымына ауысады деген қорытындыға келді. Отандық қылмыстық іс жүргізу заңнамасы мен криминалистика тарихы осы көрініст айқын көрсетеді. Қылмыстық процесс пен криминалистиканың өзара іс-қимылы, өзара тәуелділігі және өзара байланысы нәтижесінде беттестіру, тану үшін ұсыну, айғақтарды сол жерде тексеру және нақтылау, тергеу эксперименті, айғақтарды сақтауға беру сияқты айғақтарды алумен байланысты тергеу іс-әрекеттерінің туындауы мүмкін болды. Сонымен қатар, аталған тергеу әрекеттерінің дербес болуына қарамастан, оларды жүргізу жауап алынғаннан кейін ғана мүмкін болады. Бұдан басқа, заңдылық кепілдігін арттыру, қылмыстық процеске қатысушы адамдардың құқықтары мен мүдделерін қорғауды, сондай-ақ тергеудің тиімділігін қамтамасыз ету мақсатында Қазақстан Республикасының Қылмыстық іс жүргізу кодексінде түсініктемелер алу рәсімін көрсететін ережелерді регламенттеу қажет.

Мақаланың ғылыми-әдістемелік негізін Қазақстан Республикасының ҚК, ҚР ҚПК, сонымен қатар Қазақстанның және шет елдердің атақты ғалым криминалистерінің еңбектері құрайды.

Түйін сөздер: жауап алу, тергеу әрекеттері, тергеу, тергеуші, қылмыстық құдалау, дәлелдеме, тергеу эксперименті, қылмыстық іс жүргізу, жедел-іздестіру қызметі, беттестіру.

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Особенности формирования и развития следственных действий, связанных с получением показаний

Статья посвящена вопросам соотношения уголовного процесса, криминалистики и оперативно-розыскной деятельности, повлиявших на формирование и развитие следственных действий, связанных с получением показаний. Формирование процессуальных положений допроса и тактики его проведения невозможно без взаимодействия, взаимозависимости и взаимопроникновения уголовного процесса, криминалистики и оперативно-розыскной деятельности. Практика свидетельствует, что использование результатов, полученных в процессе оперативно-розыскной деятельности, в доказывании по уголовным делам способствует эффективности допроса.

В статье проанализировано ранее действовавшее и современное уголовно-процессуальное законодательство, на основании чего сформулированы предложения по совершенствованию национального законодательства.

На основе проведенного исследования авторы приходят к выводу о том, что криминалистика нередко лидирует в исследованиях и разработках, которые затем трансформируются в процессуальные нормы и в науку уголовно-процессуального права. История отечественного уголовно-процессуального законодательства и криминалистики ярко высвечивает эту картину. В результате взаимодействия, взаимозависимости и взаимопроникновения уголовного процесса и криминалистики стало возможным процессуальное возникновение таких следственных действий, связанных с получением показаний, как очная ставка, предъявление для опознания, проверка и уточнение показаний на месте, следственный эксперимент, депонирование показаний. Причем данные следственные действия «отпочковались» от допроса. В то же время, несмотря на то, что указанные следственные действия являются самостоятельными, их производство возможно только после допроса. Кроме того, в целях повышения гарантий законности, обеспечения защиты прав и интересов лиц, участвующих в уголовном процессе, а также эффективности расследования необходимо регламентировать в Уголовно-процессуальном кодексе Республики Казахстан положения, отражающие процедуру получения объяснений.

Научно-методологическую основу составили законы Республики Казахстан УК РК, УПК РК, а также труды известных ученых процессуалистов и криминалистов Казахстана и зарубежных стран.

Ключевые слова: получение показаний, следственные действия, расследование, следователь, уголовное преследование, доказательство, следственный эксперимент, уголовный процесс, оперативно-розыскная деятельность, очная ставка.

Introduction

Questions of a ratio of criminal proceedings, criminalistics and operational search activity constantly are in sight of scientists and practicians. The point of view that these sciences have an interrelation, interdependence and interpenetration prevails. In this aspect, there is a possibility of improvement of the legislation and increase in efficiency of the procedure of interrogation.

Law of criminal procedure as independent science closely connected with sciences of criminalistics and operational search activity, especially with the sections devoted to the theory of proofs and procedural carrying out investigative actions. The criminal procedure science defines limits and the conditions of application of criminalistic recommendations in the sphere of criminal proceedings, competence of participants of process of use of criminalistic means and methods.

Criminalistics science, improving policy strokes of carrying out investigative actions, carrying out new scientific developments, has significant effect on law of criminal procedure and the legislation.

In turn the science of operational search activity develops recommendations which in certain situations predetermine the choice of policy strokes for carrying out investigative actions.

Many policy strokes of obtaining proofs, which are given rise by the criminalistic theory on criminal cases, confirmed with long-term investigative and judicial practice and recognized not contradicting the law, led to emergence in the criminal procedure legislation of new legal proceedings with the corresponding regulation and filled the available investigative actions with new contents. Many criminalistic recommendations have been fixed in the existing criminal procedure legislation and became mandatory requirements of the law.

In foreign literature the following scientists were engaged in studying of a ratio of criminal procedure and law-enforcement activity: Ashworth A. (Ashworth 1995: 112); R. Cross and Ph. Jones (R. Cross and Ph. Jones. 1964: 341); Goldman R., Lentovska E., Frankowski S. (Goldman 2008: 210); Puttkammer E. (Puttkammer 1965:189); Barret E. (Barret 1965: 256); Moreland R. (Moreland 1959: 119); Fellman D. (Fellman 1958: 229) and others.

The purpose of this article consists in a research of questions of a ratio of the criminal proceedings, criminalistics and operational search activity, which influenced formation, and development of the investigative actions connected with obtaining evidences. Also by means of carrying out the analysis of legal literature and the legislation to formulate suggestions for improvement of the national criminal procedure legislation, regulating obtaining evidences in criminal proceedings.

Main part

Procedural provisions of the procedure of interrogation are regulated in clauses 208-217 of the Code of Criminal Procedure of the Republic of Kazakhstan adopted on July 4, 2014 and which took effect on January 1, 2015. Such detailed regulation of interrogation was result of consecutive reforming of the criminal procedure legislation. Policy strokes and recommendations which were developed by criminalistics science for the most effective production of this investigative action, gradually filled and enriched the rules of conducting interrogation regulated in the criminal procedure law. Developing eventually, procedural provisions and tactical and criminalistic methods of interrogation influenced emergence and development of other investigative actions, that have not been regulated earlier and connected with obtaining evidences – face-to-face interrogation, presentation for identification, check and specification of evidences on the place, an investigative experiment, and deposition of evidences.

The Code of Criminal Procedure of RSFSR approved by the resolution of ARCEC (VTsIK) of February 15, 1923 was one of the first criminal procedure laws (The Code of Criminal Procedure of RSFSR and the Criminal code of RSFSR 1923). This Code of Criminal Procedure worked also in the territory of Kazakhstan.

The above-stated law in Chapter 11 (Brining a charge and interrogation of the defendant) in Articles 134-140 and Chapter 13 (interrogation of witnesses and experts) in clauses 162-174 regulated interrogation as investigative action.

Many policy strokes and recommendations developed by criminalistics science found the procedural reflection in this Code of Criminal Procedure of RSFSR.

So, for example, interrogation of the defendant has to be made not later than 24 hours on his appearance or delivery, or obtaining data on his detention (clause 134); the investigator has to take measures to that defendants on the same case could not communicate among themselves (clause137); witnesses have to be interrogated separately from each other (clause 162), etc.

This law specified in clause 137 states: “in case of need, the investigator suits face-to-face

interrogation between defendants and also between defendants and the witness". However, in spite of the fact that the face-to-face interrogation was recognized as investigative action, in the criminal procedure law the order of its carrying out is not regulated. Such situation was explained by the fact that the face-to-face interrogation was considered as a kind of interrogation.

On July 22, 1959 the Code of Criminal Procedure of the Kazakh SSR was adopted, which is put into operation since January 1, 1960.

The specified law made significant changes and additions to the norms regulating an order of interrogation and other investigative actions connected with obtaining evidences.

Many policy strokes and recommendations developed by criminalistics were regulated in the relevant articles of the Code of Criminal Procedure of the Kazakh SSR. In particular, the clause 149, regulating an order of conducting interrogation of the witness, indicated the ban of statement of leading questions; the clause 163, regulating an order of conducting interrogation of the defendant, a duty of the investigator to begin interrogation of the defendant with clarification of its relation to the brought charge, etc.

In difference from the Code of Criminal Procedure of RSFSR of 1923, the criminal procedure law of the Kazakh SSR regulated the order and the procedure of carrying out face-to-face interrogation.

The regulation of the evidences received during presentation for identification became one more innovation of the Code of Criminal Procedure of the Kazakh SSR. It should be noted that in the specified law presentation for identification was considered not as independent investigative action, and as a kind of interrogation. Clause 154 of the Code of Criminal Procedure of the Kazakh SSR regulated interrogation at identification. Such position of the criminal procedure law caused scientific discussions. In various works on criminalistics procedural and tactical procedures of presentation were developed for identification as independent investigative action (Kocharov 1955: 185; Tsvetkov 1962:190). The master's thesis of Ginzburg A.Ya. in 1965 and his subsequent works was devoted to a research on this problem.

The Code of Criminal Procedure of the Republic of Kazakhstan adopted on December 13, 1997 regulated presentation for identification by independent investigative action in Chapter 28, clauses 228, 229.

Presentation for identification, undoubtedly, is independent investigative action proceeding from the purposes, psychological essence, tactics of carrying out and a legal regulation. The purpose of carrying out identification consists finally in identification of the shown object. The investigator in this case seek to establish whether the shown object is the same, which identifying person observed earlier in connection with the investigated event. The purpose of interrogation should be considered as obtaining full and objective information from interrogated person about circumstances, characteristics of the identity of the comitted, defendant, victim, relationship between them and all other circumstances which are subject to establishment on criminal case. In psychological aspect the essence of identification consists in recognition by identifying person of earlier perceived object. The evidences given at interrogation is the information proceeding from interrogated person and being reproduction known.

It is necessary to add that obtaining information by means of interrogation on the same facts can be numerous. From a position of criminalistic tactics it will be important reception of ensuring completeness of information or exposure in a lie. Obtaining information at interrogation, if necessary, is followed by the policy strokes directed to activization of associative communications by statement of questions, reminders of facts of common knowledge, display of separate documents, objects, etc. Presentation for identification of the same object to one identifying person – is the single act. Information at recognition or not recognition of an object received in the course of presentation for identification on contents is very limited (according to the purpose of this legal proceeding), owing to what there are no such ample tactical opportunities here as at interrogation, and memories in this case will lead various policy strokes of "revival" to prompting of desirable result, that is inadmissible.

Verification of evidences on the place (Article 1301 of the Code of Criminal Procedure) became one more new investigative action, entered into the Code of Criminal Procedure of the Kazakh SSR by the Decree of Presidium of the Supreme Council of Kaz. SSR on August 30, 1965.

It should be noted that this investigative action in practice already took place as interrogation on the crime scene, and it was carried out based on articles regulating interrogation. The tactical recommendations of production of verification evidences on the place were considered on pages of the legal press long ago. In particular, R.S. Belkin, speaking about essence of check and specification of evidences on the place, included in it showing by the defendant or witness of the certain place connected with a crime

event; the story about the actions made on this place and sometimes demonstration of some actions (Belkin 1961: 25).

Procedural regulation in the criminal procedure law of the specified investigative action was practical need as, in fact, interrogation and verification of evidences on the place are the two different investigative actions differing from each other on the purposes, maintenance, policy strokes, though they have much in common. The fact that check and specification of evidences on the place as legal proceeding arose and separated from interrogation does not raise doubts. This conclusion is confirmed by the following circumstances: first, check and specification of evidences found the procedural reflection in the law much later, than interrogation; secondly, a basis in both investigative actions is process of obtaining evidences; thirdly, when carrying out the specified investigative actions similar policy strokes and recommendations are used; fourthly, check and specification of evidences cannot be carried out if it was not preceded by interrogation (so, for example, if the suspect refused evidence, then checks and specification of its evidences are out of the question).

The basis of this investigative action is made by elements of interrogation and survey: evidence in the form of the free story, survey of the place specified by the person and inquiry in the form of statement of questions and making answers. Evidences are given with a binding to a concrete on-scene situation and can be followed by the instruction on certain objects and traces and also demonstration of certain actions. After statement of evidences and demonstration of actions, the person whose testimonies are checked during check and specification of evidences on the place, can be asked questions. In this view check and specification of evidences is as close as possible to interrogation.

At the same time, check and specification of evidences on the place should not be mixed with interrogation on the place. So, adoption by the investigator of the decision on conducting interrogation on the scene, is the policy stroke directed to revival of memory of the interrogated person and by that obtaining full and objective evidences. Besides, interrogation on the place can be made repeatedly or in addition in cases when there is a need for specification or addition of evidences for circumstances of the investigated case, given earlier. Check and specification of evidences on the place, as a rule, is not made repeatedly or in addition.

According to us, investigating questions of interrelation of criminal proceedings and criminalistics, it should be noted that the procedure of carrying out this investigative action, can be complemented with situation, concerning duty of the witness and the victim to give truthful evidences.

According to Article 257 of the Code of Criminal Procedure of the Republic of Kazakhstan check and specification of evidences on the place is that earlier interrogated person reproduces a situation and circumstances of the studied event on the place; finds and specifies the objects, documents, traces important for business; shows certain actions; shows what role in the studied event was played by these or those objects; pays attention to changes in a situation of the place of an event; concretizes and specifies the former evidences. Check and specification of evidences begin with the offer to interrogated person voluntarily to specify a route and the place where its evidences will be checked. After statement of evidences and demonstration of actions the person whose testimonies are checked can be asked questions. Any other interventions in these actions and leading questions are inadmissible. Besides, also other provisions regulating an order of conducting check and specification of evidences on the place are fixed.

The above-stated investigative action is applied as to suspects and defendants, so to witnesses and victims. Considering stated, in our opinion, it is expedient in Article 257 of the Code of Criminal Procedure of the Republic of Kazakhstan, regulating check and specification of evidences on the place, to enter the norm warning about criminal liability for giving obviously false testimonies of the witness or the victim, whose indications are checked and specified during this investigative action and also explaining the right not to testify against itself, the spouse (spouses) and the close relatives, and priests – against trusted in them on a confession.

The expediency of introduction of the above-stated provision in Article 257 of the Code of Criminal Procedure of the Republic of Kazakhstan is defined by the following. First, check and specification of evidences on the place is independent investigative action, which is the base for process of obtaining evidences. Secondly, establishment of new actual data is one of the purposes of check and specification of evidences on the place, according to Part 1 of Article 257 of the Criminal Procedure Law. Thirdly, results of this investigative action forms protocol, which according to Article 111 of Part 2 and Article 119 of the Code of Criminal Procedure of the Republic of Kazakhstan is a source of proofs.

The argument that the person whose evidences will be checked and specified during the specified

investigative action, hase been already warned about criminal liability for giving obviously false testimonies during interrogation before, cannot be taken into account proceeding from the aforesaid.

Besides, it should be noted that interrogation precedes not only to conducting check and specification of evidences on the place, but also face-to-face interrogation, and to presentation for identification. In the analysis of articles, regulating carrying out the specified investigative actions, it is visible that before carrying out face-to-face interrogation and presentation for identification, earlier interrogated persons (if it is the witness or the victim) are warned about criminal liability (Article 218 of Part 3 and Article 230 of Part 4 of the Criminal Code of Kazakhstan), in spite of the fact that they have been warned about criminal liability for giving obviously false testimonies during interrogation. It is caused by the fact that in all specified investigative actions process of obtaining evidences is used, in this regard a warning of criminal liability for giving obviously false testimonies is obligatory at their carrying out.

On the basis of stated, it is offered to enter addition into Article 257 of the Code of Criminal Procedure of the Republic of Kazakhstan – Part 4-1 in the following edition: «If the person, whose evidences are being checked and specified is the witness or the victim, then before investigative action he has to be warned about criminal liability for giving obviously false testimonies and also he is explained the right not to testify against itself, the spouse (spouses) and the close relatives, and priests – against trusted in them on a confession».

Introduction of new investigative actions, changes and additions to the criminal procedure law was necessary, in connection with requirement of practice of investigation of criminal cases.

Thus, gradual development of procedural provisions and criminalistic methods of interrogation, affected the emergence and the subsequent development of other investigative actions connected with obtaining evidences, which have not been regulated before: face-to-face interrogation, presentation for identification, check and specification of evidences on the place, an investigative experiment, deposition of evidences.

Formation of procedural provisions of interrogation and tactics of its carrying out is impossible without interaction, interdependence and interpenetration of criminal proceedings, criminalistics and operational search activity.

Practice demonstrates that use of the results received in the course of operational search activity in proof on criminal cases promotes the effectiveness of interrogation.

Legal basis of use of the materials received in the course of operational search activity at interrogation is the law of RK «About Operational Search Activity», Criminal procedure and Criminal codes of RK.

According to Article 1 of the Law of RK «About Operational Search Activity» of September 15, 1994, operational search activity represents the evidence-based system of the disclosed and secret operational search, organizational and administrative actions which are carried out according to the legislation of the Republic of Kazakhstan, by specially authorized public authorities within the competence for protection of life, health, the rights, freedoms and legitimate interests of citizens, property, safety of society and the state from criminal encroachments and also from prospecting subversive activities of special services of the foreign states and international organizations.

According to Part 2 of Article 14 of the specified law, the materials received as a result of conducting investigation and search operations before their turning in the form provided by the criminal procedure legislation or in the absence of an opportunity to enter them into criminal proceedings, do not attract any legal consequences and are not the basis for restriction of the rights, freedoms and legitimate interests of natural and legal entities.

According to the Law of RK «About Operational Search Activity», the materials received in the course of operational search activity can be used for preparation and implementation of investigative actions and conducting investigation and search operations according to prevention, suppression and disclosure of criminal offenses and also as proofs on criminal cases.

Thus, use of results of operational search activity is applied as by preparation, and directly during interrogation.

During preparation for interrogation the information obtained as a result of carrying out operational search activity is used by the investigator for interrogation scheduling. So, the investigator, knowing about a way of commission of crime; the tricks used for its concealment; the line of conduct chosen by interrogated person; his communications; the list of participants of criminal group and many other things, become known in result of OSA, will make that plan of interrogation and to carry out the choice of those policy strokes which are necessary for successful conducting interrogation.

Besides, information obtained as a result of conducting investigation and search operations helps to make to the investigator the proceeding decision on criminal case. For example, the investigator, owning the specified data, for the purpose of obtaining more effective results, makes the decision on the place and time of interrogation, its participants, use of technical means, etc.

Use of the data received in the course of operational search activity at interrogation also is expedient and necessary. During interrogation, the investigator, possessing the above-stated information, can create at interrogated belief that he knows of the mechanism of the committed crime, its participants and other facts of the case; about presence at the investigation of sufficient proofs of fault interrogated, etc.

When conducting interrogation the materials received during investigation and search operations can be used also as material evidences and documents. What the investigator during conducting interrogation, can show to interrogated person, can be for example: pictures, sound and video, schemes, drawings, images and also other objects or documents received as a result of carrying out operational search activity.

If data were received from the person, rendering assistance on a confidential basis, then investigator has to take measures for nondisclosure of this source of information. For conspiracy, during interrogation it is unacceptable direct operating by the data obtained from the above-stated source. In such cases it is obviously possible to cipher origin of information obtained from the person, carrying out assistance to law enforcement agencies on a confidential basis. For example, if a group of persons is connected to the case, then it is possible, using the data received in the operational way, to vary policy strokes so that interrogated person had an impression that information interesting the investigation was obtained from any of accomplices of crime.

Thus, use of the materials received in the course of operational search activity promotes both the effectiveness of interrogation, and investigation in general.

Obtaining the data necessary for disclosure and investigation of crimes is carried out not only by means of interrogation, but also during such operational search action as examination.

Questions of a ratio of interrogation, examination and receiving an explanation are of scientific interest and systematically rise in legal literature.

According to Patashkov S.V., Chokin Zh.M. and Kaymuldinov E.E., the community of interrogation and examination consists in the following:

First, both examination, and interrogation follow from the requirement of the law.

Secondly, examination and interrogation carry out specially on that authorized bodies of inquiry, investigation and others to which fight against crime is assigned.

Thirdly, unity of tasks: and as a result of holding examination and interrogation the important information on the facts, circumstances and faces important for crime prevention and search of criminals is obtained (Patashkov 2002: 259).

Between interrogation and examination there is also a number of essential distinctions of procedural, tactical and organizational character.

1. Examination as an operational search event can be held both before initiation of legal proceedings, and after its initiation and also regardless of crime fact.

Interrogation is conducted only after initiation of legal proceedings, and only on the circumstances important for criminal case.

2. Any citizens, authentically or presumably having data representing value for performance of the tasks assigned to the bodies, which are carrying out operational search activity, are subject to examination. The concrete rights of the interviewed persons remain independent that creates certain difficulties, and in order to avoid errors, the conflicts, violations of legality it is necessary to act on the basis of the approved organizational and tactical provisions.

Only those persons who have the procedural status provided by the criminal procedure law (the victim, the witness, the suspect, the defendant, the expert) are subject to interrogation. The rights of specified persons are accurately regulated by the criminal procedure law.

3. Survey can be conducted publicly or secretly (secretly from others). In both cases true purposes of a conversation with interviewed person can be hidden from him, that is the policy stroke of the «ciphered» examination is applied.

Interrogation is an element of criminal proceedings, which is carried out on the basis of competitiveness and publicity therefore results of interrogation finally cannot be secret.

4. Examination can be carried out orally, without official fixing of results, or can be recorded in writing (an explanation, the official report, the reference).

Interrogation has the specific procedure of fixing of results according to the Code of Criminal Procedure (Ginzburg 2005: 40).

In the Code of Criminal Procedure of the Republic of Kazakhstan and other regulations there is no definition of examination. Besides, they do not regulate an order of holding examination and receiving an explanation, its form and content.

If to consider an order and structure of interrogation, then it is visible that it is in details regulated in the criminal procedure law. So, before interrogation biographical and other data of interrogated person are established, his attitude towards participants of process, his rights and duties are explained, concerning the victim and the witness -warning of criminal liability for refusal and evasion from evidence and also for giving obviously false testimonies is made. Also, the criminal procedure law orders to interrogate the person separately from other persons which are subject to interrogation, the ban on leading questions is established, the possibility of fixing of interrogation by scientific and technical means, etc. is provided.

If to consider an order and structure of an explanation, then there are no provisions about it in the criminal procedure law and other regulations.

Conclusion

Thus, on the basis of the above, it is possible to conclude the following conclusions.

1. The criminalistics quite often is in the lead in research and development, which then are transformed to the legal procedure and to science of law of criminal procedure. The history of the domestic criminal procedure legislation and criminalistics brightly highlights this picture. As a result of interaction, interdependence and interpenetration of criminal proceedings and criminalistics procedural emergence of such investigative actions connected with obtaining evidences as face-to-face interrogation, presentation for identification, check and specification of evidences on the place, an investigative experiment, deposition of evidences became possible. And these investigative actions "gemmated" from interrogation. In too time in spite of the fact that the specified investigative actions are independent, their production is possible only after interrogation.

2. It is expedient to complete procedural regulation of check and specification of evidences on the place with the provision connected with a duty of the witness and victim to give truthful evidences. It is proved by the fact that the specified investigative action is applied as to suspects and defendants, and witnesses, the victims. The witness and the victim, unlike the suspect and the defendant, are obliged to give truthful evidences, irrespective of investigative action in which they participated and gave evidences (interrogation, face-to-face interrogation, presentation for identification, check and specification of evidences on the place).

In this regard it is offered to enter addition into Article 257 of the Code of Criminal Procedure of the Republic of Kazakhstan – Part 4-1 and to state in the following edition: "If the person, whose evidences are being checked and specified is the witness or the victim, then before investigative action he has to be warned about criminal liability for giving obviously false testimonies and also he is explained the right not to testify against itself, the spouse (spouses) and the close relatives, and priests – against trusted in them on a confession".

3. For increase in guarantees of legality, ensuring protection of the rights and the interests of the persons who are involved in criminal proceedings and also the effectiveness of investigation it is necessary to regulate the provisions reflecting the procedure of receiving explanations in the Code of Criminal Procedure of the Republic of Kazakhstan.

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