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INTERROGATION TACTICS AT THE INITIAL STAGE OF INVESTIGATION OF ACCEPTANCE OF AN OFFER, PROMISE OR RECEIPT OF UNDUE BENEFIT

Abstract. Purpose. The purpose of the article is to determine the particularities of interrogation tactics at the initial stage of an investigation of acceptance of an offer, promise or receipt of an undue benefit by an official. **Results.** The article emphasises that interrogation is one of the most important investigative (search) actions by which an investigator or prosecutor obtains evidence of a person's involvement in a crime and verifies other factual data collected; it is the most common investigative (search) action in the investigation of acceptance of an offer, promise or receipt of an undue benefit by an official. The author examines the particularities of interrogation of various categories of persons involved in the initial stage of investigation of acceptance of an offer, promise or receipt of an undue benefit by an official (giver (complainant), witness and beneficiary (suspect)). For each of these categories, the particularities that affect the tactics of interrogation are identified: for the complainant and the victim, there is a need to clarify the circumstances of the source of information about the crime; the official who committed it or is preparing to commit it; the object of the undue benefit; the goal, the achievement thereof is a condition for the provision of an undue benefit; the presence or absence of the fact of extortion of an undue benefit; identification of other witnesses, which leads to interrogation to clarify the circumstances that will further allow verification of other information about the facts obtained during the pre-trial investigation. **Conclusions.** The author concludes that the interrogation tactics in situations where a suspect denies involvement in a crime and/or refuses to testify are identified. It is determined that in the first case, the main focus is on clarifying the circumstances preceding the crime and indicating the actions of the suspect during its commission, with the need to detail the answers to enable their verification and refutation in the future, and in case of refusal to testify, it is necessary to apply tactical techniques aimed at overcoming the suspect's position by holding a conversation on an abstract topic to establish psychological contact, during which explanations and convincing that the position taken is disadvantageous for the suspect.

Key words: receipt of undue benefit, pre-trial investigation, initial stage, interrogation, tactics of conducting.

1. Introduction

Interrogation in criminal proceedings is the most common investigative action aimed at obtaining (collecting) evidence or verifying evidence already obtained in a particular criminal proceeding. The literature review reveals that interrogation during pre-trial investigation in criminal proceedings is an investigative (search) action aimed at collecting, verifying, evaluating evidence by obtaining verbal testimony from the interrogated person about the circumstances of the criminal offence known to him/her or about such circumstances that are relevant to the criminal proceedings and subsequently recording them in the pro-

cedure or in other manner, provided for by law, by the relevant actors of criminal procedure (Avramenko, Blahuta, Hutsuliak, 2013, p. 54). The CPC does not define the concept of interrogation, but only sets out the conditions under which it should be conducted. However, these conditions are extrapolated both to the type of crime (which is being investigated and for which an investigative (search) action is being taken) and depending on the specific situation that has arisen as a result of the crime (as well as because of the actions of the actors in the course of the investigation), this requires to consider interrogation as one of the most important investigative (search) actions at the first

stage of pre-trial investigation of acceptance of an offer, promise or receipt of an undue benefit by an official.

The general provisions of interrogation have repeatedly been the focus of research by scholars and practitioners, such as R.S. Bielkin, N.V. Hryshchenko, V.K. Veselskyi, V.O. Konovalova. Some issues of interrogation during the investigation of the offence being studied are described in the works by V.Yu. Shepitko, V.M. Lishchenko, Ya.Ye. Myshkov, A.I. Shyla. However, a number of controversial issues regarding admissibility and necessity of using tactical techniques to obtain the most complete information about the crime committed during the interrogation of the complainant, witnesses, suspect remain unresearched, as well as the development of tactics for interrogating the above persons in the investigation of accepting an offer, promise or receipt of an undue benefit by an official.

The purpose of the article is to determine the particularities of interrogation tactics at the initial stage of an investigation of acceptance of an offer, promise or receipt of an undue benefit by an official.

2. Interrogation of a complainant as the initial stage of an investigation of acceptance of an offer, promise or receipt of an undue benefit

The analysis of investigative practice shows that the investigation of crimes under Article 368 of the CC in terms of investigative (search) actions should begin with the interrogation of the complainant, who, according to Part 1 of Article 60 of the CPC, is a natural or legal person who has filed a statement or report of a criminal offence with a public authority responsible for commencing pre-trial proceedings and is not a victim. Given that the CPC does not provide for a separate interrogation of the complainant, under specific circumstances, a person who has filed a complaint about a crime under Article 368 of the CC may be interrogated as a witness (it is inappropriate to interrogate the complainant as a victim at the initial stage of the investigation). Then, if it is established that moral, physical or material damage has been caused to a person, the investigator has the right to question the complainant as a victim but allowing for the fact that when complainants apply to law enforcement agencies with statements about extortion of undue benefits (often at the initiative of law enforcement), and the fact of extortion is subsequently refuted in court. The tactics of interrogation and the list of circumstances to be established depends on the situation reported by the complainant and depends on the specific situation, namely, whether the complain-

ant reports the fact of acceptance of the offer or the promise of receiving an undue benefit; reports the fact of receiving an undue benefit in the past; reports the fact of receiving an undue benefit in the future; reports the fact of receiving an undue benefit, whether or not combined with extortion of an undue benefit.

The complainant is interrogated: at the place of pre-trial investigation; at the place of residence, work, at medical institution, café, premises of the operational unit (if there are circumstances that may indicate disclosure of the fact of the person's appeal to law enforcement bodies). Since in most cases the complainant provides truthful testimony, a commonly used tactic is to recreate the forgotten based on the use of associative connections (referring to circumstances adjacent in time or space, creating a situation of recall and a detailed description of the conversation, place, environment, etc.) (Veselskyi, Kuzmichov, Matsyshyn, 2005, p. 22). Interrogation of the complainant may be conducted with the use of audio or video recording, provided that in a particular situation it is necessary to conduct investigative search actions (CISA) immediately, and there is no time to draw up an interrogation records, or if the investigator or prosecutor has reason to fear that the complainant will refuse to give evidence in case of opposition to the investigation (influence, threats, family relations between the complainant and the beneficiary, etc.)

During the interrogation, it is necessary to clarify the circumstances depending on the situations described above, namely: how long the complainant has known the person who accepted the offer or promise; on whose initiative and under what circumstances they met; the occupation of the person who has accepted the offer or promise; the location of the person's office, how to get there, with a detailed description of the setting; whether the fact of the visit is reflected in any documents (Cherniavskyi, Vakulenko, Tolochko, 2014); how it became known about the acceptance of the offer or promise of undue benefit (if from the words of another person, it is necessary to find out their personal data and the circumstances under which these facts became known); information about the object of the undue benefit; for performing what actions (inaction) the official accepted the offer or promise of an undue benefit; a detailed description of actions that indicate the acceptance of the offer or promise by the official (conversation, conclusive actions, gestures, writings on paper); what exactly was the acceptance of the offer or promise; under what circumstances, in what place the conversation took place, who could have witnessed it; whether the fact of acceptance

of the offer or promise was recorded by technical means (voice recorder, mobile phone, fixed surveillance cameras, other means of communication, by sending a message, via the Internet, social networks, Skype, etc.); if recorded, for what purpose; under what conditions; in what environment (place of recording); what kind of technical device (analogue or digital) was, find out under what conditions the person who accepted the offer or promise acquired or received the technical device, its brand, series, number; whether there are any other records on the technical device; what means of communication (mobile phone number, email address, web addresses of pages on social networks) the person who accepted the offer or promise uses; who else is aware of the facts of acceptance of the offer, promise of obtaining an undue benefit; what prompted the complainant to report the bribe to law enforcement bodies (fight against bribery, personal hostility to persons involved in the crime, violation of his/her personal interests, promotion, prestigious job, business trips that are of interest to him/her) (Myshkov, 2003, pp. 178–182); whether the company is ready to take part in a tactical operation to expose the beneficiary. This list of questions is necessary but not exhaustive (as it can be expanded depending on the situation). For example, if a person reports the fact that an official received an undue benefit in the past to an investigator, the prosecutor needs to make additional inquiries: how the complainant became aware of the facts of receipt of an undue benefit by a particular official; the mechanism of transfer of the object of the undue benefit reported by the complainant (type, way of transfer, with or without an intermediary, place, environment, etc.); the time and place of the transfer, the circle of persons who could have known about the consequences of its transfer, information about possible intermediaries, etc.; find out the source of the funds provided to the official, as well as establish to whom he or she told about the giving of the undue benefit, for what actions; how long it took to perform the actions for which the undue benefit was given after the receipt of the undue benefit; if the actions were not performed in the interests of the person who provided the undue benefit, find out when the last time he/she communicated with the official on this issue, whether the issue of returning the subject of the undue benefit was raised, whether there is any evidence of the transfer of the undue benefit (receipts, electronic payments, promissory notes, entries in notebooks, other documents, records of mobile phone conversations); what prompted the person to file a voluntary report with law enforcement agen-

cies, whether the report is a kind of blackmail to return the subject of the undue benefit.

This situation in the practice of investigating this category of proceedings usually occurs in the case of systematic receipt of an undue benefit by an official, or a one-time receipt on condition of non-performance or improper performance of actions agreed with the giver in his/her interests, so it is necessary to find out all possible actions of the complainant with the subject of the undue benefit, as this may contribute to obtaining other indisputable evidence.

If the complainant reports the official's intention to receive an undue benefit in the future, the following circumstances should be investigated during the interrogation, considering the specific situation, in addition to the issues we have mentioned in the case of the notification of acceptance of the offer or promise of an undue benefit, namely: whether the complainant has taken provocative actions aimed at inciting the official to receive an undue benefit and artificially creating an environment for obtaining an undue benefit; if the complainant provides a sound or video recording of a conversation about agreeing on the terms of obtaining an undue benefit, it should be established in detail where the conversation took place and under what conditions the recording was made (outdoors, indoors, in a dark or well-lit place, on a digital or analogue technical device, mobile phone), what the serial number and brand of the technical device was; how many people participated in the conversation recorded on the technical device, whether the file with the conversation was re-recorded to another medium, and if so, whether they can provide it for the examination; who advised to record the conversation; whether the intermediary was mentioned in the conversation, if so, find out all possible information about this person known to the complainant (personal data, description of appearance, where he/she works, how the beneficiary introduced him/her, etc.) circumstances that indicate that the beneficiary made certain records on the amount of the undue benefit, the terms of the transfer, the person to whom the transfer should be made, the account number to which the funds should be transferred, etc.) if the complainant reports the fact of extortion of an undue benefit, it is additionally necessary to find out what kind of actions manifest the extortion (verbally, conclusively, by making decisions not in favour of the complainant, creating an environment in which the undue benefit should be provided, what explanations it was accompanied by, etc.) Clarification of the above issues will enable to further plan and control the commission of a crime in the form of a special investigative

experiment in conjunction with other investigative (search) actions and the NSDI.

The next category of persons subject to interrogation in criminal proceedings being studied is a witness. The tactics of interrogating witnesses depend on the investigative situation and other objective circumstances, which leads to their division according to certain criteria, namely: persons who depend on the beneficiary; persons who do not depend on the beneficiary; persons who may have participated in criminal acts. In view of this, the following persons are subject to interrogation as witnesses: complainants; persons from whom the undue benefit was extorted; accidental witnesses of the crime; persons working together with the beneficiary, including both subordinate and non-subordinate; heads of higher authorities under whom the beneficiary worked; colleagues; witnesses to the apprehension of the beneficiary; persons who have applied to the institution where the beneficiary works to resolve certain issues and have information about possible abuses by the beneficiary, his/her behaviour in the exercise of official powers, etc; persons who witnessed the beneficiary making expensive acquisitions; persons working in public establishments where the beneficiary rested or held meetings; persons in whose interests the beneficiary performed the relevant actions for a fee; persons recorded by means of conducting the CISA when transferring money to the beneficiary; attesting witnesses involved in the control of the crime in the form of a special investigative experiment; attesting witnesses who were present during other investigative (search) actions; persons who are aware of the relationship between the giver and the beneficiary; persons who have previously appealed against the actions and decisions of the beneficiary; under the specific investigative situation, other persons who may provide information about circumstances relevant to the criminal proceedings (for example, whose data was discovered during the examination of documents, search of the suspect's home or other property, his/her office (draft records, letters in both paper and electronic form, documents on the purchase of real estate, cars, or receipt of valuable gifts at reduced prices)).

In case of a special investigative experiment conducted to record criminal acts, as a result of which the beneficiary is apprehended, it is necessary to use the factor of surprise (Shylo, 2013, p. 161), which eliminates the possibility of thinking through the testimony and coordinating it with the testimony of other interested parties, so there is no time to properly prepare for the interrogation of witnesses at the initial stage of the investigation. There-

fore, it is necessary to immediately determine the place of interrogation of the witness, since if witnesses, especially those who are officials, are interrogated in any place that gives the person an impression of privilege (their office, the office of the prosecutor or the head of the investigative unit), it makes the investigator psychologically dependent on these persons. In our opinion, the interrogation should be conducted in the investigator's office, since the very fact that the interrogated person is in the office has a psychological impact on him/her, and the official nature of the interrogation is a guarantee of proper awareness of the seriousness of the events, (but if it is necessary to conceal information from unauthorised persons about the fact of interrogation, it is advisable to interrogate such a person in another place – this decision depends on the witness's classification as one of the categories of persons mentioned above).

3. Tactical techniques during the interrogation of a witness in the course of an investigation of the acceptance of an offer, promise or receipt of an undue benefit

During the interrogation, it is necessary to apply tactical techniques allowing for actions in a conflict situation, based on the fact that the witness has a negative attitude to the investigation (given that during the investigation of this type of crime, random persons are practically not in the focus of the investigation); sudden presentation of evidence, rapid interrogation and other techniques used during interrogation in a conflict situation. Although (in case of a witness's unfriendly attitude towards the beneficiary) it is necessary to establish comprehensively all cases of obtaining an undue benefit, facts of abuse, giving illegal instructions, etc. but it is necessary to find out the reason for the unfriendliness (the testimony of such persons is subject to detailed verification). In the course of interrogation, the following circumstances are established: ones related to the acceptance of an offer, promise or receipt of an undue benefit by a particular person; ones confirming or refuting the suspect's version; ones confirming or refuting information about facts obtained as a result of other investigative (search) actions and the CISA; ones characterising the suspect; other circumstances in a particular investigative situation.

The next category of persons subject to interrogation in criminal proceedings being studied is the suspect (beneficiary). The tactics of interrogation of a suspect depend mainly on the nature of the information and evidence available to the investigator, on the characteristics of the person being interrogated (degree of legal awareness, experience, posi-

tion held, corruption ties, etc.) (Veselskyi, Kuzmichov, Matsyshyn, 2005), as well as on the line of behaviour chosen by the suspect (to give truthful testimony; to build his/her story of the circumstances of the case, which may be completely false or distorting the truth; to refuse to testify on the basis of the Constitution of Ukraine, Article 63 and the provisions of the CPC, Article 42, Part 3). Given that we consider the tactics of interrogating a suspect at the initial stage of the investigation, in particular, immediately after a special investigative experiment and apprehension of a person while receiving an illegal benefit, the initial stage of the investigation is characterised by the lack of comprehensive information about the crime, the difficulty of conducting the first interrogation of a suspect is that at this stage the investigator has only information about events of the offence, the fact of apprehension of the person while receiving an undue benefit and the circumstances reported by the complainant. Meanwhile the suspect has a wide range of information about the circumstances of interest to the investigation, so whether the investigator or prosecutor can obtain it during the interrogation of the suspect depends on his or her professional abilities, the conditions of the particular situation, and objective reasons. Interrogation tactics imply consistent clarification of the circumstances related to the statement of an undue benefit or the apprehension of a person. The purpose of the interrogation is to establish a range of facts that testify to the actions of the suspect during the commission of a criminal offence (Myshkov, 2005). For tactical reasons, it is advisable to conduct this interrogation with the use of video recording, which will subsequently enable to resolve the issue of the reliability or unreliability of the testimony provided, subject to appropriate examinations.

It should be noted that the information provided by the suspect during the first interrogation may be the only confession at the stage of both pre-trial investigation and trial of criminal proceedings. In view of this, the main purpose of interrogating a suspect is to clarify the suspect's position, arguments in his or her defence, interpretation of the circumstances of the apprehension and the fact of finding the subject of the undue benefit, as well as to establish maximum information about the events preceding the apprehension by asking detailing questions. At this stage of the interrogation of the suspect, no techniques should be used to expose lies, it is necessary to create a situation of trust in his/her position as much as possible, to set it out in the interrogation report using the phrases used by the suspect. This will lead to the establish-

ment of psychological contact, a kind of trust in the investigator, enabling to obtain the necessary information from the suspect in the future. The investigator must first verify the falsity of the interrogated person's testimony, and only then, during subsequent interrogations, use the entire "arsenal" of tactical techniques to expose lies, present evidence, etc.

In a conflict situation, accompanied by denial of involvement in the commission of a crime, the relationship between the suspect and the person who gave the undue benefit to the investigator, concealment of certain circumstances, it is possible to change this situation by creating the impression that the investigation has full information about the incident, demonstrating awareness of the suspect's individual life events (Veselskyi, Kuzmichov, Matsyshyn, 2005, p. 24), previous behaviour before the arrest, the facts recorded during the CISA; a proposal to conduct an interrogation with the use of a polygraph (Turovets, 2014). In this situation, the main role is played by the investigator's detailing and clarifying questions aimed at confirming or refuting the suspect's version. Allowing for the specific situation, it is recommended to clarify the following questions: how the person who gave an undue benefit got to the place where an undue benefit was handed over; the nature of the relationship between the suspect and the person who provided an undue benefit; how the presence of traces of special chemicals on the hands, clothes or other items of the office can be explained; how the presence of a recorded conversation about agreeing on the terms of the bribe can be explained, etc.

If during the first interrogation the suspect refuses to testify, this may indicate that at this stage of the investigation the defence does not have information about the sufficiency of evidence of the person's guilt, so until the opening of the criminal proceedings and, accordingly, the receipt of information about the existence of evidence of guilt collected by the prosecution, the suspect does not give any testimony. If a person categorically refuses to testify, the investigator should not persuade him or her, as no tactical techniques in this case can change the suspect's mind. From a tactical point of view, if the suspect refuses to testify, it is necessary to create a situation of a simple conversation in which the arguments of the suspect and his/her defence counsel are heard, then recorded and investigated. In this case, it is important that the suspect discloses his or her position as fully as possible.

Therefore, it should be noted that interrogation is one of the most important investigative (search) actions by which an investigator

or prosecutor obtains evidence of a person's involvement in a crime and verifies other factual data collected; it is the most common investigative (search) action in the investigation of acceptance of an offer, promise or receipt of an undue benefit by an official.

4. Conclusions

The tactical features of interrogating a complainant or victim are the need to clarify the circumstances of the source of information about the crime; the official who committed it or is preparing to commit it; the object of the undue benefit; the goal, the achievement thereof is a condition for the provision of an undue benefit; the presence or absence of the fact of extortion of an undue benefit; identification of other witnesses, which leads to interrogation to clarify the circumstances that will further allow verification of other information about the facts obtained during the pre-trial investigation. In most cases, a suspect is interrogated if he or she denies involvement in the crime or refuses to testify. In the first case, the main focus is on clarifying the circumstances preceding the crime and indicating the actions of the suspect during its commission, with the need to detail the answers to enable their verification and refutation in the future. In case of refusal to testify, it is necessary to apply tactical techniques aimed at overcoming the suspect's position by holding a conversation on an abstract topic to establish psychological contact, during which explanations and convincing that the position taken is disadvantageous for the suspect.

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ТАКТИКА ПРОВЕДЕННЯ ДОПИТУ НА ПОЧАТКОВІЙ СТАДІЇ РОЗСЛІДУВАННЯ ЩОДО ПРИЙНЯТТЯ ПРОПОЗИЦІЇ, ОБІЦЯНКИ АБО ОДЕРЖАННЯ НЕПРАВОМІРНОЇ ВИГОДИ

Анотація. Мета. Метою статті є визначення особливостей тактики проведення допитів на початковій стадії розслідування щодо прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою. **Результати.** У статті наголошено, що допит є однією з найважливіших слідчих (розшукових) дій, за допомогою якої слідчий, прокурор отримує докази причетності особи до вчиненого злочину та перевіряє інші зібрані фактичні дані, виступає найбільш поширеною слідчою (розшуковою) дією у розслідуванні прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою. Розглянуто особливості допиту різних категорій осіб, які беруть участь на початковій стадії розслідування щодо прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою (вигодонадавача (заявника), свідка та вигодоодержувача (підозрюваного)). Для кожної із зазначених категорій визначено особливості, які впливають на тактику допиту: для заявника, потерпілого є необхідність з'ясування обставин про джерело отримання відомостей про вчинення злочину; службову особу, яка його вчинила чи готується до його вчинення; предмет неправомірної вигоди; мету, досягнення якої є умовою надання неправомірної

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вигоди; наявність чи відсутність факту вимагання неправомірної вигоди; встановлення інших свідків, що зумовлює проведення допиту для з'ясування обставин, які в подальшому нададуть можливість перевірити інші здобуті під час проведення досудового розслідування відомості про факти.

Висновки. Зроблено висновок, що виокремлено тактики допиту в ситуаціях, коли підозрюваний заперечує причетність до вчинення злочину та\або відмовляється від надання свідчень. Визначено, що в першому випадку основна увага спрямовується на з'ясування обставин, які передують події злочину та свідчать про дії підозрюваного під час його вчинення, з необхідністю деталізації відповідей для можливості їх перевірки та спростування в майбутньому, а у випадку відмови від надання показань потрібно застосувати тактичні прийоми, спрямовані на подолання позиції підозрюваного, шляхом проведення розмови на абстрактну тему для встановлення психологічного контакту, під час якої застосувати роз'яснення та переконання в тому, що зайнята позиція є не вигідною для підозрюваного.

Ключові слова: одержання неправомірної вигоди, досудове розслідування, початкова стадія, допит, тактика проведення.

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