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TACTICS OF INTERROGATING A WHISTLEBLOWER DURING THE INVESTIGATION OF CORRUPTION-RELATED CRIMINAL OFFENCES COMMITTED BY LAW ENFORCEMENT OFFICERS

Abstract. ***Purpose.*** The purpose of the article is to develop tactics for interrogating a whistleblower during the investigation of corruption-related criminal offences committed by law enforcement officers. ***Results.*** The article examines procedural and forensic aspects of obtaining information from a complainant and a whistleblower in criminal proceedings concerning corruption-related criminal offences committed by law enforcement officers. The starting point is an understanding of interrogation as an information-psychological communication process regulated by criminal procedural law, aimed at obtaining information relevant to establishing the circumstances of the event. It is demonstrated that the current Criminal Procedure Code of Ukraine grants evidentiary value only to the testimony of a suspect, accused, witness, victim, and expert, whereas the information provided by a complainant and a whistleblower is legally classified as explanations, which do not have evidentiary significance. Based on an analysis of legislation, criminal case materials, and questionnaire results, it is substantiated that the whistleblower's information at the initial stage of the investigation shapes the investigative situation, determines the directions of verification, outlines the circle of involved persons, and identifies sources of additional evidence. The article reveals substantive categories of information that should be clarified during the whistleblower's interrogation (the nature of relations with the law enforcement officer, communication methods, circumstances of extortion or receipt of undue advantage, the role of intermediaries, and motivation for reporting), as well as their significance for planning further investigative and covert investigative (search) actions. ***Conclusions.*** It is proposed to conceptually revise the procedural status of a whistleblower and include this category of persons among those whose testimony may be used as evidence by amending Article 95 of the Criminal Procedure Code of Ukraine. The necessity of establishing a special procedure for whistleblower interrogation in Article 224 of the CPC of Ukraine is substantiated, taking into account guarantees of confidentiality, safety, and special protection mechanisms provided by anti-corruption legislation, including the possibility of applying technical means of anonymization. It is concluded that integrating whistleblower information into the evidentiary system of criminal proceedings is essential for improving the effectiveness of investigating corruption-related criminal offences and ensuring the protection of the whistleblower's legal status.

Key words: interrogation, whistleblower, complainant, testimony, explanations, corruption-related criminal offence.

1. Introduction

Despite the importance of interrogation as one of the principal investigative (search) actions, criminal procedural legislation does not take into account the specific role of a whistleblower in corruption-related criminal offences, particularly his or her significance as the holder of primary information about the preparation, mechanism, and circumstances of the commission of a corruption-related criminal offence.

The Criminal Procedure Code of Ukraine does not classify a whistleblower as a subject whose testimony may constitute evidence, which leads to a contradiction between the procedural status of the complainant and the actual significance of the information he or she provides.

As a result, the whistleblower's information–although it may be decisive for formulating investigative versions, constructing investigative situations, and obtaining evidentiary information–remains outside the system of admissible evidence, while the whistleblower remains outside the scope of procedural guarantees. The absence of clear procedural regulation of whistleblower interrogation creates a gap that negatively affects the effectiveness of investigating corruption-related offences, including those committed by law enforcement officers.

Issues of interrogation tactics have been addressed in the works of forensic scholars such as V.K. Veselskyi, V.O. Konovalova, Yu.M. Chornous, V.Yu. Shepitko, L.D. Udalova, among others. Certain aspects of the legal status of whistleblowers in criminal proceedings have been explored by O.S. Bondarenko, K.L. Buhaichuk, I.V. Hlovyuk, V.V. Karelin, V.V. Komashko, S.O. Kravchenko, O.P. Kuchynska, V.V. Lutsyk, V.V. Mykhailenko, O.A. Morhunov, I.S. Oheruk, N.O. Pribitkova, K.R. Rezvorovych, A.A. Strashok, V.M. Trepak, A.B. Fodchuk, Yu.V. Tsyhaniuk.

However, the procedural possibility of interrogating a whistleblower in the investigation of corruption-related criminal offences committed by law enforcement officers, as well as the tactics of conducting such interrogation, have not been covered in the academic literature.

The purpose of the article is to develop tactics for interrogating a whistleblower during the investigation of corruption-related criminal offences committed by law enforcement officers.

2. General Principles for Ensuring the Conduct of Interrogation

Obtaining information stored in the memory of a person who is related to the circumstances of the investigated event is impossible without communication with that person, which is carried out in the form of an interrogation (Veselskyi, 1999). Interrogation is an investigative (search) action whose content is the receipt of testimony from a person possessing information relevant to the investigated criminal offense (Piaskovskyi, Chornous, Ishchenko, 2015). It is a procedural action constituting an information-psychological communication process between the participants, regulated by criminal procedural norms, and aimed at obtaining information about facts known to the interrogated person that are relevant to establishing the truth in the case (Shepitko, 2004). According to L.D. Udalova, interrogation is a verbal action whose purpose is the transmission and receipt of information about ideal reflections, that is, mental images, whose bearer is a specific individual with whom the investigator interacts (Udalova, 2007).

According to the theoretical concept, interrogation as a complex cognitive action includes provisions grouped into the following blocks:

1. psychological;
2. legal and moral;
3. tactical;
4. organizational and technical (Veselskyi, 2012).

If we consider the tactical dimension of interrogation, it encompasses such aspects as the subject matter, interrogation tactics (organizational-tactical aspect), and interpersonal interaction (psychological aspect), each of which also depends on the procedural status of the interrogated person.

Interrogation is defined as the most significant and irreplaceable investigative (search) action, since by obtaining testimony during interrogation the investigator collects and accumulates ideal traces. Therefore, the issue of optimizing the conduct of interrogation, particularly in the context of improving its psychological foundations and preparation, is extremely important (Chornous, Vlasenko, 2022).

The Criminal Procedure Code of Ukraine specifies a clear list of participants in criminal proceedings whose testimony during interrogation constitutes evidence: the suspect, the accused, the witness, the victim, and the expert (Art. 95 CPC of Ukraine).

At the same time, procedural legislation also defines the status of an applicant–an individual who has submitted a statement or report about a criminal offense to a public authority authorized to initiate a pre-trial investigation and who is not a victim (Art. 60 CPC of Ukraine).

Undoubtedly, the role of this participant is important, since the submitted report of a crime is the basis for entering information into the Unified Register of Pre-Trial Investigations and for the emergence of criminal procedural legal relations. The applicant has a certain connection to the circumstances of the case, which may vary: the person may have committed the crime they report, may have witnessed the unlawful act, or may have suffered from it. Identifying this connection enables the investigator to properly determine the subsequent status of this individual, since the applicant is a temporary participant in legal relations: in any case, the person who reported the crime will eventually become either a witness, a victim (or a representative of a minor victim), or acquire another procedural status (Halahan, Kalachova, 2012).

At the same time, the testimony obtained during the interrogation of an applicant has orienting significance for determining the strategy of investigation. Although such testimony does not have evidentiary value, it may contain important information about the circumstances of the preparation or commission of a corruption-related criminal offense by a law enforcement officer. Accordingly, the interrogation of such a person (the applicant) should be detailed, as this allows the assessment and verification of the information received.

The analysis of criminal case materials shows that witnesses and suspects were interrogated most often. However, when considering the obtaining of testimony and explanations, it is impossible to overlook the receipt of information from a whistleblower.

The CPC of Ukraine provides that a whistleblower is a natural person who, upon having a reasonable belief that the information is reliable, submitted a statement or report of a corruption-related criminal offense to the pre-trial investigation authority (paragraph 16-2 of Part One of Article 3 of the CPC of Ukraine) (Criminal Procedure Code of Ukraine, 2012). The Law of Ukraine "On Prevention of Corruption" defines a whistleblower as a natural person who, upon having a reasonable belief that the information is reliable, reported possible facts of corruption or corruption-related offenses, or other violations of this Law committed by another person, if such information became known to them in connection with their employment, professional, economic, public, or scientific activity, their service or studies, or their participation in legally required procedures that are mandatory for the commencement of such activity, service, or studies (paragraph 20 of Part One of Article 1 of the Law) (Law of Ukraine "Prevention of Corruption", 2014).

3. Specific Features of the Procedural Status of a Whistleblower

Under its procedural status, a whistleblower is considered an applicant (para. 25 part 1 Art. 3 CPC, part 3 Art. 60 CPC), but with a broader scope of procedural rights, namely: the right to a reward for disclosure; guarantees of protection from negative measures of influence (dismissal, demotion, persecution, etc.), including labour and procedural guarantees; confidentiality of the report and the possibility of preserving the secrecy of personal data; the right to free legal aid within the mechanisms of whistleblower protection; compensation for expenses related to protection; a clearly fixed and short time frame for receiving notifications regarding key procedural decisions; the possibility to apply security measures and/or workplace protection measures (transfer, leave, change of working conditions) following special procedures established by anti-corruption legislation.

If a whistleblower's report contains information on the commission of a corruption-related criminal offence, but the pre-trial investigation body enters information into the Unified Register of Pre-Trial Investigations under an article of the Criminal Code that does not qualify as corruption-related, the person does not acquire the procedural status of a whistleblower but acquires the status of an applicant (Clarification of the National Agency for the Prevention of Corruption, 2020).

An analysis of Articles 84 and 95 of the CPC of Ukraine shows that information obtained from an applicant does not constitute testimony and therefore cannot serve as evidence in criminal proceedings. A report on the commission of a crime is not evidence in criminal proceedings but constitutes grounds for an appropriate response by the pre-trial investigation bodies, for entering information into the Unified Register of Pre-Trial Investigations based on the facts stated in such a report, and for their verification (Resolution of the Panel of Judges of the First Judicial Chamber of the Supreme Court of Ukraine, 2023).

At the same time, the results of our survey demonstrate that whistleblower information often contains crucial details about the commission of a corruption-related criminal offence. The detailed recording of a whistleblower's explanations in criminal proceedings involving corruption-related offences significantly contributes to establishing the perpetrator's guilt.

The Law of Ukraine "On Prevention of Corruption" (Art. 53-3) provides the whistleblower with the right to give explanations, provide testimony, or refuse to do so (Law of Ukraine Prevention of Corruption, 2014).

However, under the provisions of procedural law, the details reported by a whistleblower concerning preparatory actions for committing a corruption-related criminal offence, the circumstances of the unlawful conduct itself, or the object of the unlawful demand may facilitate obtaining additional evidence and help determine the investigative situation at the initial stage of the investigation. Nevertheless, they will not have evidentiary value in criminal proceedings, as they do not constitute testimony but rather explanations or statements.

When obtaining explanations from a whistleblower during the investigation of corruption-related criminal offences committed by law enforcement officers, depending on the circumstances of the criminal proceedings, it is necessary to establish the following information and circumstances:

– identifying data of the whistleblower and of the law enforcement officer involved in the offence (identity of the whistleblower: personal details, position, contact information; identification of the involved law enforcement officer: full name, position, workplace; information on individuals who facilitated their acquaintance or recommended contacting this person; whether visits to the institution were recorded in relevant registers, documents, or travel records);

– the nature of the relationship between the whistleblower and the implicated law enforcement officer (circumstances of their acquaintance: when, where, under what conditions, who initiated the contact; duration of communication; type of relationship: official, personal, professional, etc.; existence of shared interests, obligations, or joint activities);

– circumstances of the corruption-related criminal offence (specific actions/inactions expected from the law enforcement officer; information about the object of the unlawful demand: its nature and amount; precise address, date, time, and circumstances of the alleged or actual offence);

– intermediaries (if any) (their personal data; how the whistleblower became acquainted with them; whether attempts were made to bypass intermediaries and communicate directly; the role of intermediaries and the nature of their relationships with both the whistleblower and the implicated officer; whether intermediaries were used by the officer);

– the whistleblower's motivation and related circumstances (reasons that prompted the report: personal motives, civic position, conflict of interest; changes in relations after the incident; whether the actions of the official were appealed–when, where, and in what form; whether the whistleblower reported the offence to third parties or other authorities).

The analysis of the circumstances that may be clarified from a whistleblower concerning a corruption-related criminal offence demonstrates that a whistleblower possesses information essential for pre-trial investigation.

Based on legislative analysis, an applicant acquires the status of a whistleblower under the following conditions: (1) a belief that the information reported is truthful; (2) reporting factual data that may confirm a possible corruption-related or other violation of the law; (3) obtaining this information through work, study, service, or participation in legal procedures. If any of these conditions is absent, the person is not considered a whistleblower.

This allows us to conclude that a whistleblower is not merely a person who reports a criminal offence but one who possesses specific information about it.

In practice, whistleblowers are often questioned as witnesses, providing testimony during interrogation. However, in this case, procedural law does not grant them the safety guarantees established by the Law of Ukraine "On Prevention of Corruption" and the Law of Ukraine "On Ensuring the Safety of Persons Participating in Criminal Proceedings".

Therefore, it is advisable to amend Article 95 of the CPC of Ukraine by restating it as follows:

"Testimony means information provided orally or in writing during interrogation by the suspect, accused, witness, victim, expert, and whistleblower regarding the circumstances known to them in a criminal proceeding that are relevant to such proceeding."

Recognising the whistleblower as a holder of information that may constitute testimony, it is advisable to amend Article 224 of the CPC of Ukraine by establishing the procedure for whistleblower interrogation and supplementing Article 224 with new parts as follows:

"… The interrogation of a whistleblower shall be conducted with due regard to the guarantees of confidentiality provided by the relevant Law, as well as with the application (if necessary) of security measures established by the Law of Ukraine 'On Ensuring the Safety of Persons Participating in Criminal Proceedings.' Upon the motion of the whistleblower, the investigator, the prosecutor, or on the initiative of the investigating judge/court, the interrogation may be conducted using technical and organisational means that prevent the whistleblower's identification by other participants in the criminal proceedings, including by: altering (masking) voice timbre, blurring or masking the image, spatial shielding, being located in a separate room, using videoconferencing, limiting the number of persons present, as well as conducting the interrogation in a closed court session as provided by this Code."

4. Conclusions

The generalisation of the conducted research makes it possible to assert that the institution of interrogation in proceedings concerning corruption-related criminal offences committed by law-enforcement officers requires substantial modernisation in light of contemporary forensic challenges and the realities of anti-corruption practice. Interrogation, as a verbal investigative action, remains a key instrument for obtaining information about the preparation, commission, and concealment of a corruption-related criminal offence.

The analysis of legislation, case materials, and empirical survey data confirms that the whistleblower forms the initial investigative situation, determines the directions of evidence collection, outlines key investigative versions, and is often the only source of information about the mechanism of corrupt interaction, the role of intermediaries, and the method of soliciting or transferring an unlawful benefit.

The findings reveal an urgent need to reconsider the procedural status of the whistleblower and to expand the normative model of interrogation. This is proposed to be achieved by recognising the whistleblower as a subject whose testimony may serve as evidence through corresponding amendments to Article 95 of the CPC of Ukraine; by developing a forensic-based procedure for whistleblower interrogation that incorporates necessary guarantees of protection, confidentiality, and safeguards against undue pressure; and by substantiating the intro-

duction of a separate interrogation procedure into Article 224 of the CPC of Ukraine, which would provide for the use of technical means to ensure anonymity and safety, as well as the possibility of conducting interrogation remotely or in a closed session.

Thus, the development of the whistleblower's procedural status, the improvement of interrogation tactics, and the integration of the information obtained into the system of proof constitute essential preconditions for enhancing the effectiveness of anti-corruption criminal proceedings. Such changes align with contemporary European standards for the protection of whistleblowers, strengthen guarantees of internal anti-corruption security, and contribute to forming a qualitatively new model of combating corruption within law-enforcement bodies.

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ТАКТИКА ОБШУКУ ПІД ЧАС РОЗСЛІДУВАННЯ КОРУПЦІЙНИХ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ВЧИНЕНИХ ПРАЦІВНИКАМИ ПРАВООХОРОННИХ ОРГАНІВ

Анотація. ***Метою статті*** є комплексне дослідження особливостей процесуальних засад й тактики проведення обшуку під час розслідування корупційних кримінальних правопорушень, учинених працівниками правоохоронних органів. ***Результати.*** У статті комплексно досліджено процесуальні та криміналістичні особливості проведення обшуку під час розслідування корупційних кримінальних правопорушень, учинених працівниками

правоохоронних органів. Відзначено, що обшук є однією з найбільш ефективних слідчих (розшукових) дій, оскільки дозволяє виявляти й фіксувати речові та цифрові докази, які мають ключове значення для встановлення фактичних обставин кримінального правопорушення. Проаналізовано положення КПК України щодо видів обшуку, порядку його проведення та процесуальних гарантій, а також акцентовано увагу на змінах, внесених у 2022 році до ст. 236 КПК України, якими передбачено можливість пошуку та фіксації комп'ютерних даних під час обшуку без окремого судового дозволу. Продемонстровано, що така новела, хоча й сприяє оперативності розслідування, водночас породжує дискусії щодо захисту приватності особи, необхідності додаткових гарантій судового контролю та правомірності втручання у сферу персональних даних. ***Висновки.*** Висвітлено особливості тактики проведення обшуку у кримінальних провадженнях щодо працівників правоохоронних органів, які характеризуються підвищеним рівнем протидії слідству, професійною обізнаністю підозрюваних та високими ризиками знищення цифрової інформації. Окрему увагу приділено питанням роботи з мобільними терміналами систем зв'язку, комп'ютерними системами та іншими цифровими пристроями, які нерідко містять відомості про підготовчі дії, взаємини між співучасниками, геолокацію, листування в месенджерах, метадані та іншу інформацію, що має значення для доказування. Обґрунтовано необхідність удосконалення алгоритму підготовки до обшуку, залучення фахівців цифрової криміналістики, забезпечення раптовості та мінімізації витоку інформації про проведення слідчої (розшукової) дії. Сформульовано пропозиції щодо вдосконалення практики застосування обшуку в умовах цифровізації доказової бази та посилення гарантій дотримання прав особи, у тому числі шляхом запровадження додаткового судового контролю за доступом до цифрових даних.

Ключові слова: обшук; цифрові докази; мобільний термінал; комп'ютерні дані; корупційне кримінальне правопорушення; працівник правоохоронного органу; тактика обшуку; право на приватність.