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OVERCOMING THE PSYCHOLOGICAL PROBLEMS OF MILITARY INVESTIGATORS THROUGH ALGORITHMIZATION OF WAR CRIMES INVESTIGATIONS

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Abstract: *The article discusses the issues of increasing the efficiency of methods for investigating war crimes, developed within the framework of forensic methodology and practical recommendations for their application in the case. The author believes that provisions and recommendations of this kind should certainly contain typical arguments for making intermediate and final decisions in criminal cases, should represent a constantly updated complex of forensic algorithms and programs, from which the optimal technology for the investigation of any type of crime, including military ones, will be formed. With the help of algorithms and programs, a new generation of universal forensic recommendations should be developed, specifically designed to manage investigative situations in the investigation of war crimes. The article is devoted to the tendencies and prospects for the development of forensic tactics and methods of investigating war crimes and includes a set of materials that contribute to the acquisition of theoretical knowledge and practical skills.*

Keywords: *forensic methodology, programming the investigation of war crimes, planning and production of investigative actions, recommendations for overcoming psychological problems, armed conflict, conditions of a combat situation.*

INTRODUCTION

At present, in order to raise the level of military discipline, strengthen legality and legal order, along with the activities of the command and educational service, the work of the military investigative bodies of the RA Investigative Committee is of particular importance. To achieve results in the fight against crime, it is necessary to improve in every possible way the scientific organization of the work of military investigative bodies, to create a professional corps of investigators with a high educational and intellectual level, the new conditions require new approaches to the formation of the personnel, its staffing with specialists, to the maximum extent suitable for military law enforcement activities in terms of their socio-psychological, personal

and business qualities. The disclosure and investigation of military and other crimes is not available to every candidate, even if he has the necessary theoretical knowledge.

The activities of a military investigator are regulated by the norms of not only general, but also specific (military) legislation. Servicemen, and therefore officers of military investigative bodies, as subjects of military-legal relations, find themselves in special conditions of military service, which make increased demands on their psycho-physiological capabilities. It seems that a candidate for the position of an investigator of military investigative bodies must correspond to a certain set of socio-psychological characteristics: developed social and volitional qualities, professional orientation of the individual, stress resistance, honesty, conscientiousness, efficiency, intellectual ability and stability of the nervous system to the effects of extreme stressors, high intellectual level, good communication skills, organizational skills, increased efficiency, reading and culture of speech. In addition, he must have good health, since the disclosure and investigation of crimes in the conditions of military service is intense and, moreover, is closely connected with the daily life of the troops, including with combat training.

METHODS

The theoretical and methodological basis of the research is: abstract-logical method, methods of induction, deduction, analysis, synthesis, systematization - to justify the approach to overcoming the psychological problems of military investigators through the algorithmization of the investigation of war crimes. The information base of the article is statistical data of state bodies, legislative and regulatory documents regulating the functioning of the system for overcoming psychological problems of military investigators in the framework of algorithmization of the investigation of war crimes, and the results of scientific research (Alexy, 1989, 2009; Van Eemeren & Grootendorst, 1992). During the study it is planned to consider the options to overcome the psychological problems of military investigators, to justify the directions of development of the system of investigation of war crimes to confirm the given hypothesis, and to examine algorithmic investigations aimed to develop a model program of investigation of certain types of crimes.

RESULTS

Research conducted at the training center of the Investigative Department showed that future employees of the Investigative Committee are guided by somewhat idealized understanding of their future professional activities. Thus, two groups of motives turned out to be the main ones: economic (stable wages, solving everyday problems, etc.) and those related to the substantive aspects of activity. Personal motives and motives for imitating an image (friends, heroes of films and books, family traditions, etc.) are next in terms of significance. The insignificant group of professional and formal motives, focused not on the content, but on the external attributes of professional activity (inclination to militarized service, the desire to make a career, the ability to have a firearm, receive special training, etc.) (Vazhinskaya, 2010).

Therefore, when identifying the ways to optimize the professional development of investigators of the Investigative Committee, an integrated approach is important: from working with prospective applicants and students of specialized law universities (personnel reserve), young investigators to improving working conditions in a separate

team and department as a whole. On the basis of specially developed curricula, it is advisable to conduct psychological trainings, role-playing and business games that will help develop students' skills for self-regulation of mental states, increase communicative competence (in particular, working out techniques for resolving conflicts, establishing psychological contact, developing an interest in self-knowledge and fostering positive qualities).

For professional development, future investigators must consistently go through four main stages: 1) the formation of professional intentions; 2) professional training; 3) professional adaptation; 4) partial or complete realization of the personality in professional work. This requires:

1. Providing psychological support. Along with the identification of strong and weak personality characteristics, from the point of view of professional requirements, in order to prevent unwanted mental states, it is advisable to introduce practical training in the development of special skills in the program of advanced training courses for investigators with up to 1 year of experience (assessment and analysis of the situation, selection of the optimal solution in a conflict situation, the ability to show endurance, self-control and resourcefulness in extreme conditions).

2. Active participation of the leader and mentor. The leader should create the necessary working conditions, the proper moral and psychological climate in the team, to know the general outlook of the young specialist, his interests and inclinations, to timely consider issues of moral and material incentives, ensuring the growth of professionalism of all employees and improving the psychological atmosphere for young investigators.

The priority way of identifying the required qualities of an applicant is an internship in the military investigative department, which makes it possible to assess the candidate as a person suitable for the profession of a military investigator. A carefully thought out daily internship plan is essential. It should provide for measures related to the participation of the candidate in the investigation of individual crimes, as well as the fulfillment of tasks for drawing up a preliminary investigation plan (according to a given plot), a plan to produce specific investigative actions, and draft procedural documents. During the internship, it is necessary to explain and even inspire the candidate that he must educate and develop the necessary stable habits and skills. Habits greatly facilitate the process of social and professional adaptation. This is especially important in terms of diligence and personal discipline, compliance with the requirements of the law and general military regulations. The formation of "correct" habits will not only allow him to psychologically easily endure the hardships of military service, but will also serve as a good foundation for achieving success in investigative activities (Demidenko & Ozhegov, 2010).

All this will contribute to the selection for the position of an investigator of persons who meet specific, sometimes stringent professional requirements, will eliminate the facts of psychological overstrain and the development of various forms of professional deformation, dissatisfaction with the official position and the chosen profession, and ultimately increase the quality and efficiency of investigative work. The purpose of the investigation of any type of crime is to establish the truth in a criminal case, the achievement of which is possible only if the investigator timely chooses the most optimal way of learning about the crime that has occurred based on the information that he will have at the initial stage of the investigation. At present, scientists see the practical implementation of the expediency and economy of the

investigation process in the creation of a program-targeted method for investigating specific types of crimes, which are reflected in the development of specialized investigation programs that reveal the algorithms of the process of investigating certain types of crimes or conducting specific investigative actions.

To date, the issue of algorithmic investigation has been subjected to the most intense study, the result of which was the development of standard programs (algorithms) for the investigation of certain types of crimes, the development of standard programs for conducting individual investigative actions and the development of scientific and practical bases for the application of such programs (algorithms). Thus, programming is a method of rationalizing the investigation and optimizing the planning of an investigation, the content of which is made up of programs aimed at determining the current situation, understanding the tasks of the investigation and choosing the means to achieve the goal. This method, as noted in the criminological literature, will significantly increase the effectiveness of the investigation by rationalizing its conduct, which will be reflected in the saving of the investigator's efforts and time, as well as in the quality of the investigation.

"The algorithm for investigating crimes, writes V.K. Gavlo (1985), this is a scientifically grounded precise statement of the sequence of investigative, operational-search and other organizational- technical actions of the investigator, their complexes, combinations, in relation to the emerging investigative situations, the implementation of which ensures the solution of the tasks set for the disclosure and investigation of crimes". In this regard, it seems to us more correct to use the term "algorithm", and it would be expedient to call the method of optimization of the investigation process algorithmization. Thus, from a forensic science point of view, an algorithm is understood as a description of a clear sequence of actions by the investigator, the implementation of which is necessary to solve the problems of the investigation. In any task of the investigator's practical activity, there are initial data for which a result must be obtained. In other words, the algorithm is a system of clearly developed descriptions of the sequence of actions of the investigator aimed at solving specific problems of the investigation, as a result of which, taking into account the initial data, the required result can be obtained.

Taking into account the above, using the example of the Republic of Armenia, we will consider the specifics of planning the most common investigative and other procedural actions, means of committing and concealing war crimes, as well as options for solving problems arising in investigative practice related to the adaptation of individual investigative actions to the conditions of a combat situation in areas of armed conflict with the aim of increasing the effectiveness of the investigation of war crimes in areas of armed conflict. When investigating war crimes in areas of an armed conflict, the investigator needs the maximum concentration of attention, appropriate investigative qualifications and experience in investigative work in this category of criminal cases, as well as the availability of time for planning and operational production of investigative and other procedural actions. At the same time, the conditions of a combat situation, when the usual, normal, stable life activity of society is disrupted, and along with it the infrastructure of society is disrupted (Mikahylov, 1993), connections, power supply, mail, communications, activities of government bodies, etc. are disorganized, have a negative impact on the investigation process of war crimes.

In this regard, it seems necessary to develop methodical guidelines for investigators on the investigation of certain types of war crimes and algorithms for the

production of certain investigative and other procedural actions, since the effectiveness and quality of the investigation of war crimes committed by the warring parties of an armed conflict is achieved by effective methods of planning the investigation and rationalizing the procedure of investigative actions in order to neutralize or reduce the influence of the destructive factors of an armed conflict on the process of investigating war crimes.

Planning a criminal investigation is a set of intermittent acts of forensic analysis of the current investigative situation, accompanied by the definition of directions, priority tasks and the subject of the investigation, questions to be clarified, and sources of evidence, the setting of tactical and forensic tasks and the integration of investigative and other actions into tactical combinations (operations) based on the generalized results of criminal practice and crime investigation practice, respectively (Churilov, 2002). The investigation planning process has a certain content and is composed of several interrelated elements: 1) analysis of the initial information; 2) putting forward versions and defining the objectives of the investigation; 3) determination of ways and means of solving the assigned tasks; 4) drawing up a written plan; 5) control of execution and adjustment of the investigation plan (Averyanova, Belkin, Korukhov & Rossinskaya, 1999).

The totality of these elements constitutes the content of the planning stage, with each subsequent stage being a detailing of the elements of the previous stage. In turn, the planning stages correspond to the stages of the investigation itself, the existence of which is due to the difference in tasks solved by the investigator at each of these stages (initial and further) (Malikov, 2005). Thus, an analysis of the materials of criminal cases on war crimes committed in areas of armed conflict, considered by international tribunals, shows that sources of information about war crimes, means of committing and concealing them, as well as a list of investigative actions to collect evidence-based information during the investigation, with the flow of time do not change significantly.

A military investigator investigates specific crimes, for which he must have knowledge in various fields of military affairs and, above all, in forensic science. Teaching forensic science needs significant modernization, a wider introduction into the educational process of computer learning technologies, as well as interactive methods based on the development of students and listeners practical skills for detecting, fixing and removing evidence-based information, and involving practitioners in the educational process. Forensic science has created and developed the foundations of expert technologies. Forensic science as a scientific discipline uses the ideas, theories and methods of a significant number of sciences. The level and content of the professional training of any lawyer, regardless of his specific activity in the field of jurisprudence, not to mention the investigation of crimes, depends on knowledge in the field of forensic science.

Working conditions require the investigator to be more independent in making procedural and tactical decisions. Therefore, the level of preparedness of the investigator is extremely important. The basis for obtaining practical skills is the material and technical base. The general provisions of forensic techniques, tactics of investigative actions, methods of disclosing and investigating crimes are repeated with investigators. The main focus is on the problems that the investigator faces or may face in his practice. Having mastered the skills of using forensic tools and methods, investigators continue their studies at the staged scene of the incident, where they are tasked with fixing the situation, detecting and removing traces. At the end of the

inspection, a discussion of the results obtained and the mistakes made is held. Particular attention is paid to the possibilities of forensic examinations, the tactics of their appointment. Therefore, in addition to theoretical studies, visits to expert institutions are organized. In the course of training, the issues of qualification, disclosure and investigation of certain types and groups of crimes are considered. Both criminal prosecutors and investigators of the department for the investigation of particularly important cases, assistants to the department of procedural control conduct classes.

Great importance is attached to the tactics of the production of investigative actions. Forensic prosecutors and employees of the department for the investigation of particularly important cases share their experience in conducting interrogations, searches and other investigative actions. Investigators study methodological, reference and scientific literature available in the forensic department library. In addition, employees of the forensic department annually develop and send to the field guidelines on the most complex and relevant topics and areas (Zorin, 2010). In general, the methodology for investigating criminal cases of war crimes consists in the implementation of a complex of investigative and operational-search measures aimed at identifying and arresting the perpetrators, as well as in the detection, fixation and subsequent expert study of traces of war crimes, and includes: a) carrying out inspections of crime scenes (including studies of mass graves of corpses) with the involvement of specialists in the field of forensic medicine; b) interrogation of witnesses, victims, accused; c) seizure and subsequent study of orders, instructions and other documents seized from the enemy; d) carrying out various kinds of examinations (forensic, forensic technical, chemical, as well as, if necessary, spectrographic studies); e) the qualified use of technical and forensic means in the process of examining the places of committing war crimes (as a rule, photo and video filming was used); f) investigation of the inscriptions found in the prison premises where the arrested civilians were kept in order to identify the accomplices of the occupiers and traitors (Vinokurov, 2011).

The peculiarity of planning the investigation of criminal cases in areas of armed conflict is that the head of the investigation team, based on the standard investigation plans for individual elements of war crimes and standard plans for conducting investigative actions approved by the Chairman of the Investigative Committee of the Republic of Armenia, which detail algorithms for investigative and other actions, circumstances to be proven, an indicative list of issues to be clarified, constitutes a general plan for the investigation of a war crime. The general plan for the investigation of a war crime includes: a) basic, common to all members of the investigation team, the objectives of the investigation and the priority tasks of the investigation at a certain stage of the investigation; b) investigative versions to be verified; c) the distribution of work areas between members of the investigation team, indicating specific tasks for each of them; d) the procedure for mutual information of the members of the investigation team (Antipov, 2002).

Based on the general plan of the investigation and taking into account individual private assignments of the head of the investigation team, each member of the investigation team draws up a detailed individual plan of his work. When investigating criminal cases of this category, it is necessary that each member of the investigation team, with the coordinating role of the head of the investigation team, have an independent area of work, which is allocated according to the investigative versions being verified, individual episodes of the criminal case, suspects, units (military units,

formations) and types investigative and other procedural actions. At the same time, in order to increase the effectiveness of the investigation, the members of the investigation team must constantly inform each other about the evidentiary information received in the criminal case and take measures to exclude the possibility of communication between the interrogated persons and those persons who have not yet been interrogated.

As for the peculiarities of organizing the work of the investigation team, they depend on the following circumstances: a) the initial investigative situation; b) the stage of the investigation - initial or further; c) whether the investigative team includes investigators who have experience in investigating crimes of this type; d) how many witnesses need to be interrogated; e) seizure and inspection of how much combat and operational documentation needs to be produced. One of the most important sources of evidentiary information in the investigation of criminal cases of war crimes is interrogation, without which not a single investigation of a criminal case can do. Moreover, 70% of the investigator's time budget is spent on interrogations, and 90% of all information on a criminal case is provided by the results of interrogations.

As for the conduct of interrogations in the area of an armed conflict, they have their own characteristics, due to the presence of conditions of a combat situation. In an area of an armed conflict, investigators must carry out this investigative action in the most competent, complete and exhaustive manner, with the wide use of control and detailed questions, because the conditions of the combat situation may not allow additional or repeated interrogation in connection with the death, injury, capture or business trip of the interrogated serviceman. An analysis of the investigative practice of the military investigating authorities shows that in most cases interrogations are conducted descriptively and in sufficient detail about all the circumstances directly related to the criminal case, but the investigator does nothing to verify the testimony of the interrogated, does not ask control questions.

As a result, a fairly complete and rich interrogation protocol is obtained, containing evidence important for the case, but it is impossible to judge how reliable these testimonies are based on such an interrogation protocol. This error always negatively affects the entire course of the investigation, but it has a particularly negative significance for the practice of military investigative bodies in areas of armed conflict, where the possibility of finding any other evidence other than the testimony of the person being interrogated is extremely limited. In addition, unlike interrogation conducted in peacetime, interrogation in a combat situation, in our opinion, is complicated by the very environment in which interrogation is conducted (mobile forensic laboratory, dugout, tent, shell crater, ruins, trench, shelter or other inconvenient room or location), which often does not facilitate the establishment of psychological contact with the interrogated and does not create a favorable atmosphere for interrogation.

It seems that one of the main tactical methods of interrogation used in the investigation of war crimes in areas of armed conflict, regardless of whether the investigator has doubts about the objectivity of the testimony of the interrogated, should be the detailing of these testimonies, since the investigator poses detailed and control questions to clarify and verify the circumstances of the case is extremely important. According to S.A. Golunsky (1942): "Underestimation of this circumstance is extremely harmful to the results of the investigation, since even a few scattered evidence, even if it refers to secondary facts, will significantly help the investigator to correctly assess the

testimony of the accused and understand the case. But on those issues on which it is impossible to collect such evidence, the investigator faces a very difficult task - to verify the testimony of the person being interrogated using his own testimony. This task can be solved only with the help of skillful interrogation and, in particular, with the wide use of control questions".

It seems that in areas of armed conflict, the investigator is obliged to take into account and evaluate the mental, emotional and psychological state of the interrogated, as well as the possible consequences of combat mental trauma received during the conduct of hostilities or as a result of the commission of a war crime, and to choose the most expedient and procedurally acceptable tactical methods of obtaining evidentiary information. It is also very important to study the theory of legal argumentation in order to correctly and reasonably bring arguments through a series of logical reasoning, i.e., claims, discussion, dialogue, conversation, and persuasion.

DISCUSSION

The reliability of the presented approaches is confirmed by the fact that legal argumentation (normative, legal argumentation) is one of the main methods in legal practice; a system of ways of persuasion, which are inherent in a rational nature, social and dialogical conditioning, a verbal form of expression. The ultimate goal is to convince the audience of the correctness of a certain position offered to its attention, to persuade it to accept a certain point of view, position (thesis), to induce thought or action. The validity of arguments in various forms depends on the validity of the statements that need to be inserted to fulfill this requirement. Arguments in further forms are needed to justify the validity of such claims (Weinberger, 1970). In many legal disputes, understanding the facts is critical. There is no disagreement about the normative acts that should be adopted, the decision is based only on the facts on which it should be based.

The pragmatism of legal argumentation is manifested in the need to resolve the issue of whether this or that interpretation of the legal text is correct (Alexy, 2003). The role of argumentation in the activities of a lawyer is especially significant, who cannot but strive, for example, to convince a judge of the validity of his client's position or to influence the audience for any other purpose that directly affects the prospects of human life. The latter turns out to be directly dependent on the arguments, which must be effective, valid, legal, reasonable, and weighty. For a lawyer, it is important not only to know the object and elements of the argument, but also the rules for constructing its composition, that is, the grouping of its constituent parts. At the same time, the question of determining the strength and weight of various arguments remains important. This theory can be the theory of rational discourse, developed in the 80s of XX century by Robert Alexy. The theoretical and legal concepts of R. Alexy are based on the thesis of the dual nature of law, the combination of two principles in it - ideal and real (factual). The factual beginning in law is represented by elements (social facts) of official origin and social efficiency, and the ideal - by elements of moral correctness (Alexy, 2009). The presence of the ideal in law presupposes the need for a critical attitude towards legal positivism, and calls for the formation of a non-positivist concept of law.

Dutch scientists F. van Eemeren and R. Grootendorst (1992) distinguish three types of argumentation composition: compositional, subordinate and plural. The correct and successful choice of a composition by a lawyer not only facilitates its perception by

the audience, but also makes it more effective. According to Professor K. Lumer (Italy), the following principles of presenting legal argumentation are practically significant: clarity and unambiguity; consistency and logic; reliability; immanence (constancy); pluralism and maximum simplicity. It follows from the modern theory of argumentation that the subject of legal argumentation must meet the following basic requirements: competence; seriousness; responsibility; honesty; openness to dialogue with the audience.

This significantly expands the requirements for the logic of legal reasoning, since they go beyond the boundaries of the laws of logic traditionally recommended for use by lawyers: identity, which requires that any thought have a stable and very specific content; a contradiction asking for a "yes" and "no" answer to the same question, at the same time, in the same sense; the excluded third, which guarantees the truth of only one of the two conflicting statements; a sufficient reason to guide the lawyer that his statements should be substantiated by other true provisions. It should be emphasized that the most important goal of legal argumentation is to resolve contradictions (conflicts) between different points of view. Among other things, argumentation can force a person to change some point of view, or to strengthen it. With its help, it is possible to reach a consensus and prevent the conflict of points of view from turning into an aggressive confrontation of people. To convince - means to prove or disprove any position with logical arguments, to induce confidence that the truth of the thesis has been proven. The important factors of persuasiveness are the conviction in the correctness of their position on the case and the high culture of his thinking. It is no exaggeration to say that the technique of proof is the lawyer's main weapon. In the theories of forensic evidence, considerable attention is paid to legal norms that govern the process of proof, the nature of evidence, sources and methods of obtaining them, their assessment from the standpoint of legal compliance and admissibility. Interests give rise to many additional factors that significantly affect the process of proof.

There are two characteristics of discourse theory that show themselves favorably. The first of these is the fact that discourse theory includes a description of the pragmatic aspects of justification; the second is the fact that it does not attempt to provide criteria that are strong enough to allow an accurate determination of the outcome simply from an understanding of discourse theory. Rules and forms are set out, the observance and implementation of which increases the likelihood of achieving the correct result, which is a rational or reasonable result in any discussion. It cannot be said solely on the basis of these rules and forms - except in cases of discursive necessity - what these results will be. This requires real or imagined discussion. As an argumentation, the norms give a special character to the structure of legal justification. A comprehensive analysis of all possible forms of argumentation in legal discourse will yield something like a grammar of legal argumentation. However, to continue the analogy, it doesn't tell us anything about what to say if you speak a language that follows this grammar. Nevertheless, he would show how you can act to achieve a rational result (Perelman & Olbrechts-Tyteca, 1958).

The logical status of norms is a matter of controversy. Rottleuthner denies that they have the nature of rules. They are said to only serve "to point out points of view on pressing issues and to suggest areas of investigation" (Rottleuthner, 1973a; 1973b). Hart (2012) calls these "general rules of language use". Müller (1997) speaks of "elements in the process of concretization" and "moments in a single interpretive procedure", and Larenz (1991) speaks of "guiding perspectives that are assigned variable weight". These

grounds are rational, which can be justified in a rational legal discussion. All possible arguments of legal discourse are permissible when discussing this kind of legal arguments. Of course, general practical arguments in this situation will play a decisive role; since these very legal arguments being discussed cannot themselves be used to determine its result. Thus, the problem of streamlining the ranks is shown as a problem that must be solved mainly by the methods of general practical thinking.

CONCLUSION

To summarize, we can say that although the norms do not guarantee that the correct answer will be found with a relatively high degree of certainty, they nevertheless represent more than merely tools for secondary legitimization of a solution that can be achieved and justified by alternative means. They represent the forms in which legal arguments must be made if they want to fulfill their requirements for correctness, which, in contrast to generally accepted practical reasoning, contain recognition of the mandatory quality of legislation (Hart, 2012; Kriele, 1967). At the same time, it should be noted that it is extremely important for a lawyer to master the logic of reasoning - to be able to substantiate his innocence and logically prove the inconsistency of the opponent's theses. Therefore, the main purpose of a speech by a legal speaker is to influence the audience by revealing new facts, placing appropriate accents and, most importantly, by appealing to the imagination and emotions of the audience.

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