

**Situational character of the tasks solved
by an advocate in the criminal procedure**

Abstract: Legal defense represents a type of cognitive activity, the purpose of which, as of any cognition, is the determination of truth.

Specificity of the cognition realized with the legal defense determines the specificity of tasks of legal defense.

The logical, psychological, procedural and criminalistics aspects of tasks of legal defense have been analyzed; the process of statement of tasks has been researched. The classification of tasks of legal defense has been carried out.

Initiation and solution of the tasks of legal defense has a situational character. The concept of situations, their types, correlations with tasks of legal defense has been considered. Problem situations, structure of solution of problems have been analyzed.

Keywords: cognition; task of legal defense; criminal procedure; situation; issue; problem.

Cognition, realized by an advocate as a defense party represents juridical, legal cognition, associated with the effect of norms of criminal law, defining the corpus delicti, its legal framework, within which the extent of responsibility of the subject in execution of crime and other circumstances should be determined

Legal defense is governed by the Criminal Procedure Code, which determines the terms, subject and limits of the proof, time boundaries of whole procedure, its main and secondary tasks.

The purpose of the legal defense, as of type of cognitive activity, is the

♦ **Isayeva Ruhiyya Vahid gizi** – PhD student at the Institute of Human Rights of the Azerbaijan National Academy of Sciences (ANAS), an advocate (Azerbaijan).
E-mail: Ruhiyya.Isayeva@gmail.com

determination of the truth, which has a methodological meaning for advocate practice, since it leads not only to the determination of the truth but also to the use of reliable methods.

The cognition in the process of legal defense has a specific fragment of reality as its object – socially dangerous and unlawful act of man affects the interests of personality, being associated with his psychology, study of public relations, social orientation, physical and moral state.

In this regards, specific tasks arise in the process of legal defense, determined with the character of crime, content of relevant information, provisions of criminal and criminal-procedure law, peculiarity of investigatory situations.

Not only do these features of cognition in legal defense put it into a special situation that in itself is not of little importance, but also dictate it rigid requirements, requiring the lawyer to be an expert of the highest level, to possess excellent knowledge of law, to extensively use scientific tools and methods, as well as get assistance from persons, experienced in various areas of science, technology and trade in order to attain the truth.

Any kind of human activity inevitably meets certain obstacles on its way to achieve the purpose. The main obstacle on the way to determine the truth on the case and in performance of functional duties during realization of the legal defense is the lack of information, its deficiency, contradictions. In order to remove these interceptions and achieve a main goal of legal defense, the intermediate tasks are set, solution of which allows filling the information gaps, eliminating contradictions and explaining raised questions. To overcome these challenges, the advocate must realize the purpose of activity; imagine practical ways to achieve it within activity standards (logical, psychological, temporal, spatial, moral, technical, social and others). Thus, one can affirm that need to overcome any challenges on a way to achieve the purpose of activity generates the specific task of the legal defense, which represents a requirement realized by the defense counsel in a certain situation to achieve a goal by means of specific methods of completion of information, elimination of its uncertainty (10, p. 77).

Generation (formulation) of a task is an intellectual process which depending on the experience, special knowledge of the advocate, complexity of a situation and other factors can be rather simple procedure, or challengeable. To avoid challenges the criminalistics specially develops standard tasks which can arise in standard (regular) situations.

It is obvious that it is more difficult to form tasks which arise in emergency, complex situations. Formulation of tasks in such situations depends on ability of the defense counsel correctly estimate a situation and character of problems arising in it. For this purpose it is essential to have professional and life experience, knowledge on criminalistics, law, logic, psychology, content of historical background, etc.

In psychological aspect the task represents the result of awareness of uncertainty of a situation and need to overcome this uncertainty for continuation of activity and achievement of the purpose. The task in psychological aspect is always associated with the will of the person, i.e. his ability to work purposefully, thanks to internal efforts. Here arises a very interesting, but complex question about free will and necessity. Being limited with the volume of the article it can be stated only that while solving the task a free will becomes apparent in the opportunity to select the very tasks and the methods of their solution within the framework of the law, moral norms, and scientific recommendations. This provision directly follows from provisions of psychology on will according to which the volitional act differs from directly arising impulsive desires of necessity to work only in definite way, suppressing in itself "I want so" with experience "it is what is needed", "it is so necessary in the interests of truth". The volitional act is, as a rule, accompanied by fight of motives in which the aspiration to truth prevails (5, p. 77).

In logical aspect the task is associated with a compulsory assessment of a specific situation and available information with expression of results of this assessment in the form of a certain type: "it is necessary to perform certain actions". The assertion, in which the task is expressed, has a character of an imperative, i.e. the obligatory (authoritative) instruction, but differing depending on assessment of the

situation on alternative or hypothetical and categorical and unconditional, ordering to work only this way and not otherwise.

The logical tasks arising during the legal defense, can have both hypothetical expression, and categorical. For example, a task – “to participate in interrogation of accused” has a meaning of categorical instruction: performance of this task is obligatory because the success of legal defense depends from this. The following tasks are alternative ones like: “it is possible to get advice of the expert during the appointment of the expertise”. Such task provides a choice: the defense counsel either decides himself the circle of questions to be raised before the expert, or gets his advice (1, p. 26-27).

The logical aspect of a task is interesting also to that the task is closely connected with such form of thinking as a question. The question is one of most and constantly used logical ways of transition from ignorance to knowledge, a way of its development in all areas of human activity. Defense is not an exception. In it there can be more, than in any other area of practice the necessity to ask questions and search for their answers. The question arises in those situations in which it is impossible to receive the knowledge directly, when it doesn't satisfy the purposes of the knowledge and activity, in other words, when ignorance blocks a way to truth. In this both the task and question are similar among themselves.

The distinctions exist in the fact that the question states knowledge, but the task, being also associated with ignorance, however can arise irrespective of whether the knowledge is present or not. Statement of questions is quite often associated with the development of versions, i.e. with the hypothetical answer to a question. The problem definition may not depend on development of versions. Thus, the majority of tasks of organizational character are not connected with versions (9, p. 52).

The question in itself does not oblige to search for knowledge; it only notes that the necessary knowledge is absent. While the task has a binding character, it specifies what is necessary to do for receipt of knowledge. Therefore it is to the greater degree connected with logical-psychological methods, recommendations, criminal procedure instructions.

In procedural aspect the task of the defense is normative, compulsory for execution instruction of the law following from the purposes of the criminal procedure activity. The tasks arising in criminal procedure activity, define also nature of legal relationship of the defense counsel with other participants of criminal trial. Thus, the tasks of a search define a procedural mode of its production, a task of interrogation of the suspect and accused generate special legal relationship between them, the investigator, and the defense counsel.

At last, the criminalistic aspect of defense tasks arising in criminal procedure consists in that that this aspect is as though synthesized and psychological, logical, criminal procedure and information aspects receive a peculiar expression. Therefore in criminalistic aspect the defense task is one of conditions of the purposeful activity, providing on scientific bases and within the law the implementation of the defense (2, p. 27-29).

All defense tasks are developed taking into account their logical and psychological nature and criminal procedure orientation. They rely on synthesis of advocate, operational search, investigative, judicial and expert practices, to some extent in them is concentrated the experience borrowed from other kinds of activity, especially having a retrospective focus, - archaeological and historical researches, art criticism researches. Development of defense tasks is interwoven into fabric of criminalistic doctrines and theories, and represents their integral part.

Conditionally, classification of the defense tasks can be made on the following bases: generality level (the general and private); field of activity; content (search, research, etc.); complexity (complex and simple); method of initiation; depending on sequence of their decision.

All tasks defining the content of work of the defense counsel, are closely connected among themselves, forming system of tasks in which the solution of one task prepares statement and the solution of other tasks.

In principle, each task of defense if it is correctly formulated has to be solved. The solution of tasks removes an obstacle in cognition of the facts, allows answering arising questions. This situation fully belongs to defense activity.

However, it should be noted that the specified situation assumes an ideal case. In practice, for many reasons some tasks remain unsolved at the result of which there arises gaps in information, separate circumstances are established not completely.

It is assumed that the correct solution of the defense tasks depends on that, how truly and fully defined: a) character of the task itself, its formulation is given; b) procedural conditions of the solution of a task; c) basic data necessary for solution of a task; d) means and methods of the solution of a task - algorithm of the decision.

Initiation and solution of tasks, as whole the process of defense, have a situational character. This means that no ordinary task is solved without considering a concrete situation. In it indissoluble communication of objective (situations) and subjective (tasks), inherent in any kind of human activity, including the defense is evident.

There is no yet a uniform scientific concept on situations. Thus, R. S. Belkin characterized a situation as some set of real-life conditions and circumstances in which the investigation is done. These conditions include also information on a crime event (4, p. 66-72). Other researchers believe that the investigative situation is an information model, reflection of a real situation. L.Ya. Drapkin writes in this regards: "Models of real situations... arising on criminal cases, we will name further as investigative situations" (8, p. 16-18). L.Ya. Drapkin gives also more complex definition of an investigative situation (7, p. 24-26).

Evaluating the definition provided by L.Ya. Drapkin considering the investigative situation as model of circumstances, O.Ya. Bayev points out that the parties of process work in real circumstances, meet real challenges, study real information and events. In other words, they deal, first of all, with the original, with the valid set-up (3, p. 8-11). The model and modeling are tools for cognition of reality, means of its display, in particular, in consciousness of the defense counsel studying a real situation. It would be a mistake to tear off the model of circumstances from its real basis, but much bigger mistake is a replacement of a real situation with a model.

Classification of investigative situations: simple and complex, initial, intermediate and final is provided in works of R. S. Belkin, L.Ya. Drapkin, O.Ya. Bayev, I.F.Gerasimov and other criminalists. In turn complex situations are subdivided on problematic, conflicting, organizational, disordered and mixed (6, p. 61-62).

In order to thoroughly analyze specifics of initiation and solution of defense tasks depending on character of situations, we will consider only one of them - an initial situation. These situations determine the beginning of work of the advocate on the matter and depend on many factors: character of a crime, place, time, methods of execution and concealment, sources of primary information, the personality of the defendant, the mechanism of formation of traces, their destruction, behavior and psychology of the victim and witnesses, actions of the defendant after execution of a crime and other factors. Initial situations represent peculiar “projection” of a post-criminal situation, its reflection. Some fragments of a post-criminal situation remain and become part of an investigative situation. Such as the place and circumstances of execution of a crime, sometimes the tools used by the person; traces of his actions, the victim, witnesses, material values, documents, means of transport, at last, the client who caught red-handed or on “hot scents” or has come to confess.

The initial situation is characterized not only with these fragments. In its structure there are also other elements of actual reality, which in turn is forming other situations, for example, of a natural phenomenon, behavior of people, productions, etc. The initial investigative situation appears to be a fragment of a historical background - part of reality (8, p. 66). The highlighting of this fragment and its consideration as an initial investigative situation is impossible without setting the logical and psychological tasks.

As a rule, initial situations are problematic situations i.e. such the assessment of which allows revealing uncertainty about occurred phenomenon. Such uncertainty in turn forms the basis for statement of questions, opens a way to acknowledge that in known there is also something unknown, but essentially important for solution of raising questions and the solution of the arisen tasks.

Considering the initiation of the problem only from the logical side (though we should note right away that this impoverishes the approach since initiation of a problem has complex psychological, informational and organizational aspects), it is necessary to highlight the following main elements (stages) in structure of this cogitative act: introduction with the primary information regarding event; statement of the general task regarding collection of necessary information; specification of this task by statement of thorough questions (what happened, when, where, to whom, committed by whom, under what circumstances, by means of what, for what purpose); study and search of the additional information necessary for formation of general idea about happening; preliminary estimate (filtration) of information from the point of view of its relevancy to a phenomenon, reliability, the criminalistic importance; identification of the problem through study of information and detection in it of the uncertainty regarding questions stated above; problem formulation; attempt to resolve a problem by means of search of answer in available or further received information; hypothetical solution of the problem.

The problem covertly reflects the matter uncertainty and a point of contradiction between knowledge and ignorance regarding an event, between what is and should be known of it, what barriers (informational, organizational, logical, psychological) need to be overcome for this purpose.

The problems arising at the result of study of initial investigative situations is the first and quite responsible step in defense because the content of problems defines further statement of tasks and direction of their solution while implementing the defense.

The above stated allows to draw a conclusion that defense tasks are conditioned with situations due to which their solution is possible only by taking into account certain events, which happened on a tape of an historical background in its various parameters.

The foregoing allows drawing a conclusion that tasks of defense are situational and, therefore, their performance is possible only by taking into account certain events, which took place in various parameters of certain events timeline.

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