



Mutallimov A.N.♦

DOI: 10.25108/2304-1730-1749.iolr.2018.55.161-172

**Tactics of defence on resolution of conflict
situations in criminal proceedings**

Abstract: Disagreement does not exhaust all variety of conflicts arising in criminal proceedings. Conflict on the level of disagreements is possible upon presence of certain views on problem that contradicts an opinion other side in this communion. However the views can coincide and a participant of process is able to realize correctness of a lawyer's position, agreeing inwardly with his arguments, but a desire to achieve his own, often wrong, purposes is forced to resist and act contrary to an emerging conviction.

Therefore conflict situation, which develops in criminal proceedings process, must be defined as a clash of interests and (or) views of participants of criminal process that affects on process of establishment of objective truth in a case.

Keywords: defence; conflict; criminal proceedings; conviction; tactics; logic; psychology.

In criminalistical science a conflict situation is characterized as a clash of contradicting interests, and in this connection it is significant a definition, which was formed by L.Ya. Drapkin: "Conflict situation in investigation is a especial state of a system interpersonal relationships of two or more participants of criminal proceedings that have an opposite interests and aimed to achievement of various goals in conditions of informational uncertainty relatively of plans and intentions, at least, one of rivaling sides" [2, p. 105]. Such understanding of a conflict largely determines estimative and motivational nature of this form of interaction.

♦ **Mutallimov Abuzar Neymat oglu** – lawyer, a member of the Bar Association of Azerbaijan Republic, a member of International Organization for Legal Researches (Azerbaijan). E-mail: amutallimov@mail.ru



Psychological science has developed universal methods of overcoming of conflict, in frame of which are effective the techniques directed to achievement of certain purposes. In criminalistical science an overcoming of conflict is quite often considered as possible result of activity. In particular, Baev O.Yu. includes in an evolution of development of a conflict in preliminary investigation the following stages: “1) awareness by participants (or one of them) of the situation as a conflict; making a decision to participate in the conflict; 3) a choice of general strategy of behaviour in conflict situation; 4) a choice and conducting of actions in frames of general strategy of communication up to resolution of conflict” [1, p. 23]. Thus, criminalistics is paid great attention to tactical techniques of behaviour in conflict situation; however a problem of overcoming of a conflict is practically reduced to establishing of psychological contact.

A scheme of the way out of a conflict situation was proposed by D. Daniel, but his methods of solving confrontations psychology are possible in an activity of a lawyer with certain reservations. Four-step method of overcoming disagreements in an interpretation of Dan Daniel comes to the following stages: 1) determining a time for conversation; 2) preparation of conditions for conversation; 3) discussion of a problem; 4) conclusion of the contract [3, p. 36]. Such a scheme with certain correction factors is quite applicable in the interests of overcoming a conflict in the practice of defence.

Knowledge of an identity of the interlocutor is a necessary element for creating conditions for communication. Such knowledge helps in preventing possible confrontations before the beginning of the stage of conflict interaction, or it helps to mitigate and remove the state of confrontation. One of the most important behavioral and characterological features of a defendant’s personality is a type of his self-defense. In particular, I.T. Krivoshein identifies two types of self-defense: 1) intellectual volitional (rational), which is characterized by elements of a logical, analytical and evaluation plan; 2) intellectual emotional (emotional),



which distinguishes the dominant manifestation of emotions [4, p. 110-111]. Such subdivision plays very important role in choice of strategy a convincing impact. For people with a pronounced emotional background of protection, the rational methods of persuasion are applicable only with certain ‘correction factors’. For example, to ensure that arguments of a lawyer were perceived by accused, which is in a state of intense emotional arousal, an influence of these negative mood backgrounds should be reduced or even eliminated. In addition, the emotional type of defense is obviously characterized by representation of negative emotions, but this should not touch a lawyer, for whom it is necessary to remain calm and try to restrain his feelings.

The next stage after studying of an identity of recipient and forming the conditions for communication is a stage of discussion of a problem, during of which is made clear an opinion of parties on certain matters.

A lawyer may put forward a certain hypothesis about his opponent’s views on a particular problem, and openly state it in approximately the following form: “The problem arose because we have different points of view on ...”. Such a construction of the assumption of a possible divergence of views may direct a conflict party in one of three ways of behaviour: 1) the conflicting party will take psychological impact for granted and agree with a lawyer’s conclusion concerning the existing discrepancies; 2) an opponent of a lawyer will not agree with the latter’s opinion on the reasons for confrontation that has arisen and decides to express his opinion on this matter; 3) the conflicting party refuses to speak out on the problem that has arisen. If the first two types of reaction to psychological influence are constructive and contribute to formation of common positions, the search for consent, then in the event of refusal to continue the dialogue, the views of the conflicting party remain uncleared.

On the other side, a consent or disagreement with a lawyer’s opinion on the reasons for confrontation that has arisen is not always truthful. Here we are talking



about possibility of false consent or a false disagreement. Therefore, an opinion of conflicting party regarding the reasons for discrepancy should be comprehensively evaluated. Otherwise, a lawyer runs the risk of going the wrong way, and will overcome the discrepancies without knowing their real reasons.

Awareness by the parties the reasons for discrepancies that have arisen is the basis for formation of common principled positions. Failure to provide explanations for possible disagreements can often serve as a basis for overcoming the conflict through exposure or in other ways. Nevertheless, a lawyer should not refuse the possibility of overcoming a conflict by seeking common principled positions, discussing the problem and conducting negotiations in general.

The stage of a conclusion of a contract is very conditional. Lawyer cannot conclude any transaction with the accused or other participants of the process. Conclusion of a contract in the course of overcoming a conflict arising in the process of protection means explaining to other participants of the process the consequences of incorrect counteraction by them to defence, convincing them that they have wrongly evaluated the situation.

Persuasion is a content of negotiating in any conflict interaction. Therefore, the practice of overcoming the conflict in defence activity is a multi-stage variation process based on logically substantiated recommendations for persuading an opposing party to refuse its position and necessity for reorientation.

The methods of persuasion, depending on particularities of the persuasive impact on the psyche, are divided by criminalistical literature into four types: 1) clarification (explanation); 2) proving; 3) refutation; 4) persuasion [5, p. 154]. All indicated forms of convincing impact have a certain psychological implication, and their skillful use, consisting in grouping, coordination and dispersal, will allow a defender to take all measures to ensure that the opposing person takes the position of cooperation.



Acceptance the position of a persuader, which means a decision on active assistance, is achievable by creating consistency of the value systems of a lawyer and opposing by addressing to socially significant and universally recognized moral priorities, and also by stimulating a positive emotional background of relationships.

Lawyer, acting in frames of procedural form, should conduct principled negotiations, in which positions and interests of a defence might be changed. So, he may successfully use the method offered by of R. Fisher and W. Ury named as principled negotiations (substantive negotiations), which come to the four components: 1) separate the peoples from the problem; 2) focus on interests, not positions; 3) invent options for mutual gain; 4) insist on using objective criteria [6, p. 27-29]

Each of named elements of conducting the negotiations directed on achievement of reasonable agreement, in which the objective norms are ensured. In context of process of protection, here one is talking about the norms of criminal and criminal procedural legislation. Therefore hard-line position concerning objective legal norms during overcoming a conflict that arisen upon protection guarantees observance of law and order, comprehensiveness, completeness and objectivity of investigation of circumstances of a criminal case, protection o rights and interests of an individual.

References

1. Baev O.Ya. Konfliktnye situatsii na predvaritel'nom sledstvii (Osnovy preduprezhdeniya i razresheniya) [Conflict situations on preliminary investigation (Basis of prevention and resolution)]. Voronezh, 1984, 132 p.
2. Drapkin L.Ya. Osnovy teorii sledstvennykh situatsiyi [Basis of theory of investigative situations]. Sverdlovsk, 1987, 168 p.



3. Dan Daniel Preodolenie raznoglasiyi. Kak uluchshit' vzaimootnoshenia na rabote i doma [Overcoming the discrepancies. How to improve interrelations at work and home]. Per. s angl. M.I. Smilnikova [Translated from English by M.I. Smolnikova]. Moscow, 1994, 138 p.
4. Krivoshein I.T. Tipy samozaschity obvinyaemykh pri doprose [Types of self-defence of accused at interrogation] // Aktual'nye voprosy bor'by s prestupnost'yu [Actual issues of combat to crime]. Tomsk, 1990, pp. 106-112.
5. Sokol V.Yu. Taktiko-kriminalisticheskoe obespechenie raskrytiya i rassledovaniya prestupleniya [Tactic and criminalistical supporting of disclosure and investigation of crime]. Dis... kand. yurid. nauk [PhD in Law Diss.]. Moscow, 1998, 188 p.
6. Fisher R., Ury W. Put' k soglasiyu ili peregovory bez porazheniya [Getting to Yes: Negotiating Agreement Without Giving In]. per. s angl. A. Gorelova [Translated from English by A. Gorelova]. Moscow, 1992, 158 p.