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The Possibilities of Inversion Thinking in Defense in Criminal Proceedings

Abstract: Criminalistic thinking as the basis of defense counsel activity in criminal proceedings, from the point of view of its structure, may be presented from two positions: as a state and as a set of methods. In the first case, the structure of criminalistic thinking is hierarchical, that is, its components are arranged conditionally vertically or are embedded in one another. In the second case, the elements of criminalistic thinking - tools, methods, operations - do not have a strict dependence on one another and are equal among themselves.

A similar system may also be formed in relation to information resources used by an attorney in the defense of criminal cases.

Keywords: criminalistic thinking; inversion; defense counsel activity; stages; techniques of inversion thinking.

Inversion, from the Latin word inversion meaning “rearrangement,” as a tool of thinking consists of replacing the order of sequence and statements about something in logical reasoning with their negation in order to determine a new point of view regarding a specific situation [6].

Inversion thinking “from the opposite,” in various interpretations, has been applied in many fields of knowledge and human activity since ancient times. Thus, the philosophers Marcus Aurelius, Seneca, and Epictetus regularly performed an exercise known as premeditatio malorum - the premeditation of evil - the essence of which consisted in imagining possible negative events in life, believing that such a scenario would allow them to overcome fears regarding negative experiences and create plans to prevent them [4].

The German scholar Carl Jacobi, known for his ability to solve complex problems by following the strategy *muss immer umkehren*, or, in a free translation, “invert, always invert,” believed that one of the best ways to clarify thinking was to repeat the essence of problems in reverse form. To do this, he wrote down the opposite description of the task he was trying to solve and soon discovered that the solution came to him more easily [3].

Thus, inversion as a tool of criminalistic thinking shows a new point of view on errors and obstacles that, at first glance, are not obvious. Criminalistic thinking is not a separate method of cognition and cannot be reduced to a final list of methods; rather, it represents the product of the basic personal qualities of the knowing subject, his knowledge, combined with certain instrumental methods.

Usually, issues of criminalistic thinking are considered as components of criminalistic tactics or in relation to a corresponding specific specialty or area of activity: operational-search, prosecuto-

♦ Nasibov Kamandar Rafi oglu – PhD in Law, lawyer, a member of Bar Association of the Republic of Azerbaijan, a member of the International Organization for Legal Research (Azerbaijan). E-mail: k.nasibov@knp.az

rial, expert, judicial, defense counsel activity, and so on. This is because certain criminalistic categories included in the theory of criminalistic thinking, such as versions, criminalistic situations, procedural decisions, goal-setting, errors, and others, are generally considered within the structure of criminalistic tactics.

The theory of criminalistic thinking, being part of the general theory of criminalistics, includes other criminalistic theories, which primarily include the theory of criminalistic situations, the theory of investigative and other errors, the theory of investigative versions, the theory of planning and goal-setting, and others [1].

At the same time, it is more than obvious that criminalistic thinking permeates the entire content of activities related to the detection and investigation of crimes. Accordingly, its theory, like some other criminalistic theories, may, if necessary, be considered in the context of criminalistic techniques, tactics, methods of investigating certain types and categories of crimes, as well as related theoretical constructions: theories of forensic examination, operational-search activity, prosecutorial activity, judicial activity, defense counsel activity, and so on. In this regard, the theory of criminalistic thinking is an attempt at a systematic solution to several problems of criminalistic science [8, p. 111].

Criminalistic thinking as the basis of defense counsel activity in criminal proceedings, from the point of view of its structure, may be presented from two positions: as a state and as a set of methods. In the first case, the structure of criminalistic thinking is hierarchical, that is, its components are arranged conditionally vertically or are embedded in one another. In the second case, the elements of criminalistic thinking - tools, methods, operations - do not have a strict dependence on one another and are equal among themselves.

A similar system may also be formed in relation to information resources used by an attorney in the defense of criminal cases. Schematically, these may include the following:

1. Information about the circumstances of the crime in the form of a brief or detailed narrative, including an indication of the initial knowledge of the case. This level may include different types of information and knowledge derived from it, as well as operations for their processing. In the context of applied recommendations, this level reflects the need to filter and manipulate the information used by the defense counsel in criminal proceedings;

2. Available sources of trace information related to the case; establishing the relevance of information sources to the crime.

In addition to vertical and horizontal structures, criminalistic thinking may be considered in the chronology of successive stages reflecting the intellectual activity of the subject of criminalistic thinking, in our case, the attorney.

In legal literature, the structural elements of criminalistic thinking as a component of defense counsel activity include:

- defining a specific situation and diagnosing it;
- determining and formulating the main goal and the tasks necessary to achieve it;
- putting forward and verifying versions [7, p. 71].

The British organization ACPO, the Association of Chief Police Officers, named the following as the main principles of criminalistic thinking: collecting information; assessing threats and developing a working strategy; considering powers and limitations; identifying opportunities and unforeseen circumstances; taking action [10].

This decision-making model existed in Great Britain until 2015, when ACPO was abolished and replaced by the National Police Chiefs' Council.

Particular interest is the model proposed by Nobel Prize winners A. Tversky and D. Kahneman, according to which thinking consists of two components. The first operates permanently and is characterized by high speed and a low level of critical analysis of the decisions being made. The second, on the contrary, is engaged only in complex cases and is characterized by high efficiency in evaluating information and making decisions, as well as by the difficulty of engaging it and high energy consumption [9].

In the context of the problem under consideration, it may be summarized that the decision-making process should be "slowed down" as often as possible, and hasty conclusions, even those based on similar examples, should be avoided in cases where there is no additional confirmation.

The conducted studies made it possible to define and formulate the following methods of inversion thinking in defense in criminal proceedings.

1) The reverse sequence of alogisms consists of transforming the traditional way of solving a task into the opposite, illogical, reverse order.

For this purpose, the search for ways to solve the problem is carried out indirectly, without touching upon the main problem. The attorney moves away from a frontal "attack" on the problem being solved, and studies the case materials and situations from the end to the beginning.

At the same time, functionally harmful elements of the investigative situation are transformed into useful ones or are neutralized by means of permissible tactical influence, while the elements of the situation are divided into minimal parts in order to solve smaller problems and subsequently combine the results into a single whole.

The defense counsel must neutralize or minimize individual negative links between the elements of the situation, and duplicate the means of permissible influence of individual elements of the method in order to obtain the most complete, objective, and comprehensive information.

2) The redistribution of information contained in the elements of the situation consists of isolating the complex structures of the analyzed investigative situation or the personality of its participants. The complexly connected characteristics of the analyzed object are taken beyond the limits of the object itself, which thereby reveals its essence, while the separated elements are considered from the standpoint of their origin, their influence on the analyzed object, and their influence on the investigative situation.

The redistribution of information may be successfully applied for the stage-by-stage solution of defense tasks. For this purpose, the objects under study are conditionally divided into the following blocks:

a). The block of interdependencies of the entire complex of tasks being solved when analyzing the current investigative situation and when analyzing the programmed upcoming procedural action. For each block, general and specific tasks should be identified, classified according to complexity, non-standard tasks should be separated, and they should be analyzed from the position of the defense counsel and those persons who will participate in the investigative situation and analyze it in accordance with the norms of the Criminal Procedure Code;

b). The block of issues of a separate procedural action or part of it. Each issue and its parts may be divided, which will help deepen the defense plan and lead to the formulation of new questions. The emergence of new questions for the attorney presupposes forecasting possible answers to them, which ensures a more detailed analysis of new investigative situations.

3) The search for and structuring of investigative errors, which will allow the attorney to use them effectively in defense in criminal proceedings.

Understanding the nature and place of errors in the structure of the investigation as a whole, or of an investigative action in particular, will contribute to their active use by the attorney.

4) The relocation of the goal and tasks of the defense, which in the course of judicial proceedings may be carried out by strengthening or weakening the sound of speech; by a pause that has a “speaking,” emphasizing character; by eye movement or gesture; by facial expression.

This, in turn, may cause a reassessment of behavioral acts, the significance of evidence, or the tactics chosen by the prosecution. Shifting the emphasis in the technique used changes the direction of attention, disorients the prosecution, adds, reduces, increases, hides the undesirable, and highlights the desirable [2, pp. 151-153].

The defense counsel may achieve the goal in the minimum time and with maximum effectiveness of intermediate actions by performing a number of actions aimed at searching for it and clearly formulating it.

For this purpose, it is necessary to formulate all the goals that the defense counsel wishes to achieve, determine the sequence of their achievement, that is, identify intermediate and final goals; check the consistency of the goals, determine the evidentiary value of achieving the system of goals of the entire case and each goal separately; establish the degree of risk in achieving the set goals and the admissibility of tactical loss if the goal is not achieved. It is necessary to know how permissible the failure to achieve the goal is, and whether the results of the attorney’s activity correspond to the norms of morality, the Criminal Code, and the Criminal Procedure Code.

It is also necessary to identify all conditions that optimize the achievement of the set goals, determine the system of interdependencies of conditions; establish the priority of conditions, that is, determine those that have an especially positive or especially negative influence on the achievement of the set goals; transform negative conditions until they are completely neutralized or use them in a positive sense; formulate the final desired result taking into account the goal or system of goals; model possible shortcomings of the upcoming result, that is, determine the part of evidentiary information that will be established through complex ways; select and classify methods that ensure the achievement of the set goal; recheck each method separately and within the system, in the complex of tactical defense operations; detect and eliminate the imperfection of the selected methods and adapt them to solving the assigned tasks.

Simultaneously with the reduction of informational uncertainty, the attorney increasingly adapts to the investigative situation and to the criminal situation that has become the object of study. By overcoming informational uncertainty, he brings the maximum possible rationality and balance into his assessments of the situation, depriving himself of dissatisfaction regarding probable errors.

5) The elimination of defense errors is a natural component of his activity, which creates the need to study and prevent potentially erroneous situations in a multifaceted manner.

The methodology for overcoming defense errors is a branched, multi-level system containing a number of productive modular methods:

- Multi-criteria classification of errors, ensuring proactive anticipation of typical errors in the system of regularly performed actions;

- Criminalistic diagnostics, containing algorithms for searching for errors, mechanisms for analyzing initial data, models for constructing a hypothesis of the diagnosed object, and methods of self-diagnosis;

- Proactive forecasting, allowing forecasts to be built on the results of intermediate forecasts;

- Method of using analogies, allowing informational gaps in diagnostics, forecasting, and error searching to be supplemented with information from criminalistic analogies, including analogies reflecting typical errors.

6) Transformation of the elements of the situation:

- The situation or its elements may be simplified in all directions until its complete adaptation and understanding, and then all elements may be included back into the situation in order to see how they influence the development of the situation;

- The situation may be dismantled to its foundation and then assembled again in order to consistently consider each element from the standpoint of its place in the system and structure, while considering their internal interaction with one another;

- Dynamic situations may be considered discretely in a slowed-down mode, conditionally stopping their sequential development, interrupting the dynamics by tenths of a second or centimeters in order to see the sequence of relevant and significant actions;

- The conditions of the situation may be generated, developing them into a prospective forecast and results positive for the defense;

- The mutual influence of cause and effect may be determined, which creates the need to switch their places;

- The range of versions put forward may be expanded, and then the circle of its possible participants may be narrowed through verification;

- The set of techniques used in defense may be changed by moving from a “defensive” position to an offensive one, and then to a “waiting” position, considering the results achieved and the accumulation of “positive” potentials of communicative interaction with participants in criminal proceedings [5, p. 10].

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Возможности инверсионного мышления при защите в уголовном судопроизводстве

Аннотация: Криминалистическое мышление как основание адвокатской деятельности в уголовном судопроизводстве с точки зрения его структуры, может быть представлено с двух позиций: как состояние и как совокупность методов. В первом случае структура криминалистического мышления является иерархической, то есть её компоненты расположены условно вертикально, либо вложены друг в друга, а во втором – элементы криминалистического мышления – инструменты, методы, операции – не имеют жёсткой зависимости друг от друга, равны между собой.

Аналогичную систему можно сформировать и в отношении информационных ресурсов, используемых адвокатом при защите по уголовным делам.

Ключевые слова: криминалистическое мышление; инверсия; адвокатская деятельность; этапы; приемы инверсионного мышления.

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♦Насибов Кямандар Рафи оглы – доктор философии по праву, адвокат, член Коллегии адвокатов Азербайджанской Республики, член Международной организации правовых исследований (Азербайджан). E-mail: k.nasibov@knp.az

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Nəsibov K.R.♦

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Cinayət mühakimə icraatında müdafiə zamanı inversiya təfəkkürünün imkanları

Xülasə: Strukturu baxımından cinayət mühakimə icraatında vəkillik fəaliyyətinin əsası kimi kriminalistik təfəkkür iki mövqedən təqdim edilə bilər: vəziyyət kimi və metodlar məcmusu kimi. Birinci halda kriminalistik təfəkkürün strukturu ierarxikdir, yəni onun komponentləri şərti olaraq şaquli yerləşir və ya bir-birinin içinə daxil edilib, ikinci halda isə - kriminalistik təfəkkürün elementləri - alətlər, metodlar, əməliyyatlar - bir-birindən sərt asılılığa malik deyil, öz aralarında bərabərdir.

Analoji sistemi vəkili cinayət işləri üzrə müdafiə zamanı istifadə etdiyi informasiya resurslarına münasibətdə də formalaşdırmaq olar.

Açar sözlər: kriminalistik təfəkkür; inversiya; vəkillik fəaliyyəti; mərhələlər; inversiya təfəkkürünün üsulları.

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♦ Nəsibov Kamandar Rəfi oğlu – hüquq üzrə fəlsəfə doktoru, vəkil, Azərbaycan Respublikasının Vəkillər Kollegiyasının üzvü, Beynəlxalq Hüquqi Tədqiqatlar Təşkilatının üzvü (Azərbaycan). E-mail: k.nasibov@knp.az