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Peculiarities of the initial investigation of human trafficking

***Abstract.** The article contains information about the initial investigation practices and peculiarities of the criminal case opening on matters related to human trafficking. The article draws attention to what is understood by the phase of initial investigation in criminal investigation. It is quite an independent segment in the work on a criminal case, during which, along with the general tasks, some specific and casual tasks are being solved, meaning the tasks related to the crime detection and investigation and which are characteristic of this particular phase in this investigation.*

***Key words:** methodology, investigation, offence, trade, person, circumstance, detective, action, prevention, community.*

Currently human trafficking has become one of the most dangerous and widely spread crimes committed by the organized international criminal communities.

Investigation of human trafficking includes the following: a number of criminalistics recommendations, investigatory actions and special investigation activities, solving of organizational tasks aimed at crime detection and investigation. This type of an investigation can be divided into several phases.

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ing solved, meaning the tasks related to the crime detection and investigation and which are characteristic of this particular phase in this investigation.

Until quite recently, one of the most widely spread opinions said about the existence of the two phases in this type of investigation: initial and later investigation. The first phase lasted until the opening of a criminal case, and the second one until the investigation termination¹.

¹ See.: Belkin R.S. Introduction into the technics of investigation of certain types of a crime. Criminal Investigation // Edited by A.I. Vinberg. M., 1959. P. 333; Luzgin I.M. Methodological challenges of investigation. M., 1973. P. 89; Selivanov N.A. Notions and principles of investigation methodology // Methodology of crime investigation (general notions). M., 1976. P. 13.

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According to Philippov A.G. the detective must solve the following tasks during the initial investigation phase:

- 1) verification of the primary lead of the criminal event based on the information collected by the moment of the criminal case opening;
- 2) grasping of the facts, which need reviewing;
- 3) immediate collection of evidence, which may be lost; taking actions to search for the person suspected in commission of the crime and his or her detention;
- 4) taking immediate action aimed at compensation of the damage caused by the criminal act;
- 5) initiating work in order to find out the contributing causes of commission of the crime.

The next phase in investigation supposes further work: evidence collection, reviewing and assessment of the evidence in order to fully substantiate all facts on this particular case².

I.A. Although Vozgrin acknowledges the existing classification of the investigative phases in criminal investigation in general, at the same time he speaks about the imperfection of this classification and suggests the third final investigative phase. According to I.A. Vozgrin, from the point of view of criminalistics, the contents of this phase constitute peculiarities of procedure of additional and repeating investigative actions, analysis of the most frequent claims and petitions from the part of the accused defendants after the conclusion of the investigation of a particular category of a crime³.

R.S. Belkin, who also supported a two-phase approach in investigation before, later arrived to the conclusion about the advisability of the subsequent division of this process into three phases. The necessity of this division is urged by the direction of focuses of investigative activities in each phase and their corresponding investigative actions and

special investigative activities. According to R.S. Belkin, the contents of this phase include the following:

1. Phase of initial investigation. The main focus in this phase is made on the thorough search, discovery of evidence and preservation of evidence. The activities of a detective and investigators should be operative and urgent. The determinative factor in this phase is the time.
2. Phase of subsequent investigation. The main focus in this phase is made on the extensive, subsequent and methodological proving. Once the offender has been located and the evidence collected is sufficient for holding him/her liable, the subsequent phase supposes a thorough review of the causes of accusation, detection of all crime accessories and all the episodes of the criminal activities, review how all crime elements are related, determination of the crime intent and circumstances contributing to the crime.
3. Phase of final investigation includes the following:
 - ✓ proceedings upon the investigative procedure conclusion;
 - ✓ additional investigative actions, which are carried out upon the petition, when the movers of the petition are the defendant or his/her lawyer, when the petition is filed by order of the supervising prosecutor or the chief of the investigative force of the body of internal affairs and by the decision of the court;
 - ✓ repeated investigations, which are carried out on the same grounds, as if in the case of resuming of proceedings on a terminated or discontinued case, when the case is returned after judicial examination or after the vacating of judgment;
 - ✓ organizational or technical measures needed to complete the investigation⁴.

N.K. Kuzmenko also speaks about the necessity of the three phases division: urgent (from the procedure of the first urgent investigatory action until the last one or until the

² See.: Criminal Investigation / Edited by A.G. Philippov. M., 2000. P. 412.

³ See.: Vozgrin I.A. About the framework of investigation techniques of certain types of a crime // Questions on practice and theory of crime prevention. L., 1974. P. 82.

⁴ See.: A course in criminal investigation by Belkin R.S. In Three Vol. Vol. 3. Phases of crime investigation. M., 1997. P. 390.

transfer of the case to the competence; initial (before holding the individual as a defendant), and subsequent (before drawing up conclusion to indict). The task of the first phase is to carry out urgent investigatory actions, whereas the task of the second phase is to substantiate all other investigative actions aimed at collecting and review, the task of the third phase is gathering of additional evidence after the interrogation of the defendant⁵.

We lean toward the view, that depending on the nature of the case there may be more than two phases in investigation. In particular, a phase of opening of a criminal case is characteristic of the human trafficking investigation. This phase includes verification of the materials, which are at the disposal of the law enforcement agencies and which are related to the events, which have signs of a crime.

Strictly speaking, this phase is not included into investigation, but precedes it. In a number of cases this phase is obligatory condition to open a criminal case. In criminal investigation it is called preliminary review of the materials containing the signs of a crime.

According to V.V. Stepanov, preliminary review of information and reporting on crimes is the liability of the persons authorized by the criminal procedural law and their activities are aimed at detection of the crime signs and other circumstances for making a prompt and grounded decision about the criminal case opening and taking other actions⁶.

The main task of the preliminary review is to determine whether there are any signs of a crime in this matter and to which type of a crime they can be referred, based on these signs decide whether there is a need to open a criminal case.

Thus, the stage of preliminary review (pre-investigation review) is an independent work of a detective and the essence of this work is to decide whether it is needed to

open a criminal case on this matter, to determine and to preserve the actual data, which may be used as evidence on the case.

In the initial stage of the review of information about the signs indicating the fact of human trafficking, the information about the occurred fact comes from the most comprehensible and convenient sources for recording.

The main goal in this stage is to obtain the raw information on the essence of the matter; prove or disprove the evidence of human trafficking in this case and information about implication of certain individuals in this crime. Besides this, it is immediately decided to take actions to prevent homicide or bodily injury.

In the course of the review it is necessary to determine the participation of certain individuals implicated in human trafficking (for instance, the recruiters), as they may inform the accessories, conceal traces of crime, etc. It makes sense to inform these individuals in case if we deal in fact with a single offence and it has already been committed. Under these circumstances we can open a criminal case and apprehend the suspects.

A criminal case should be opened immediately if the signs of a crime are obvious, or urgent measures are needed to free the person whose health and life are in danger⁷.

Instantaneously an operational investigative group is created with the detective as the head of the group. This detective takes over the case. It is impossible to carry out the preliminary review in such a case, as any loss of time can result in a tragedy.

Possible case studies in the phase of review of the information about human trafficking.

Case study 1. Information about the fact of a crime comes from the person affected (victim), who got free himself or was freed by the perpetrators on certain terms, which were not fulfilled due to some reason. In such a situation the information reported by

⁵ See.: Division into phases in crime investigation technique by N.K. Kuzmenko // Technique (Guidelines) of crime investigation. General statements. M., 1976. P. 114.

⁶ See.: Preliminary review of the raw information about crimes by V.V. Stepanov. Saratov, 1972. P. 11.

⁷ Fakhrutdinov R.R. «Investigation techniques of human trafficking». PhD in Law dissertation abstract. Chelyabinsk, 2011. P. 7.

the victim may be inconsistent and the credibility of such information may be put under question; at the same time the bodies of the Ministry of Internal Affairs have a real opportunity to ensure security of a crime victim and his/her relatives.

The Prosecutor's office investigator must personally accept the crime victim's statement in written or oral form. According to Part 2 Article 141 of Criminal Procedure Code of the Russian Federation the oral statement is to be performed in a transcript. In this case the applicant should provide the following information:

- 1) information about the applicant (last name, first name, middle name, place of birth, address, work address and current job position);
- 2) information about his/her relations with the perpetrators (whether he/she knew them before the abduction, if the perpetrators got him/her free, then on which terms and conditions, why these conditions were not fulfilled);
- 3) actual circumstances of a crime (time, place and type of recruiting, transfer, site where he/she was held, the number of perpetrators, information about their appearance, clothes, names and nicknames, information about the equipment and weapons, etc.);
- 4) circumstances of the victim's release (how he/she managed to get free, if he/she got free by the perpetrators, then on which terms and conditions, why these conditions were not fulfilled);
- 5) which of the relatives or acquaintances of the crime victim knows about the occurred fact of abduction.

Further on the preliminary review is carried out by efforts of the criminal investigation branch.

Most of the above-mentioned measures generally may be applied to the cases of human trafficking. Although it is necessary to keep in mind that these measures should be carried out under certain conditions: 1) secrecy not to frighten away the perpetrators, 2) within the shortest possible period of time.

In actual practice the preliminary review includes the following: questioning, making inquires, tapping telephone conversations and other actions, which are in the competence of the operational investigative authorities.

Information enquired during the questioning of the individuals is determined by the relation of this individual to the crime victim, information about abduction and related circumstances, which may be known to the individual. So, witnesses to the recruiting and transfer are asked to describe the scene and provide detailed information about the perpetrators. The relatives of the victim are asked to tell what is known to them about the crime and what the victim told them about it, etc. All questioning should be carried out secretly and within the shortest possible period of time.

Inquires on the victim's identity, his/her wealth, marital status, working experience may be made at various agencies, organizations and establishments — local tax office, local administration, etc. Important information may be obtained from the records of the Ministry of Internal Affairs and also in subdivisions for economic crime prevention.

According to Article 8 of the Federal law «About operational investigation activities in the Russian Federation»⁸ in case if there is a threat to health and life, property of some individuals it is allowed with their written consent to tap telephone conversations on their phones on the grounds of the provision approved by the head of the department for operational investigation activities followed by the required court notice (or judge) within 48 hours. Besides this, in urgent cases, which may result in a felony, on the basis of the reasoned decree by one of the heads of the body for operational investigation activities, operational investigative measures may take place, which limit the civil rights for secrecy of correspondence, postal, telegraph and other messages and also for inviolability of resi-

⁸ Legislation Bulletin of the Russian Federation. 1995. № 33. P. 3349.

dence. These measures may be taken on the basis of the judgment and if there is information about the contemplated, being carried out or occurred wrongful act, which require the procedure of preliminary investigation; or about the individuals, who are contemplating, carrying out or carried out such wrongful act. Human trafficking refers to such wrongful acts.

Case study 2. Information about the fact of abduction comes from the crime victim's relatives or acquaintances, who contacted the victim by phone or by some other means and got to know about what has happened.

The following review is advisable to be made:

1) questioning of the applicant, during which the following should be found out:

- ✓ when and by which means the crime victim contacted them; contents of their conversation;
- ✓ the purpose of the committed crime, in case if the crime victim is aware about it and informed them about it;
- ✓ information about the crime victim: character, range of interests, living circumstances, education, which specialties majored in, previous working experience;
- ✓ whether the crime victim's way of living was antisocial, in particular, whether he/she engaged in prostitution, had alcohol or drug addiction, belonged to which sexual orientation;
- ✓ whether the crime victim made new acquaintances recently.

2) Operational investigative measures

- ✓ making inquires about the crime victim, way of living, occupation, connections, record of conviction, oversees travelling experience;
- ✓ making inquires in customs authorities of the Federal Security Service, consular representation of foreign countries.

When there is information about implication of certain individuals or firms in human trafficking, the following measures are taken:

- ✓ making inquires about the suspects, inquiry in operative records of the Minis-

try of Internal Affairs, Federal Security Service, Migration service and Interpol;

- ✓ operative surveillance;
- ✓ tapping of the telephone conversations and obtaining of information from the technical channels of communication.

Case study 3. An individual got missing under circumstances indicating commission of a crime provided by Article 127 of the Penal Code of the Russian Federation.

A number of signs may indicate such a crime:

- 1) Absence of ransom demand after abduction;
- 2) Information about the intentions of the missing person to find a well-paid job, study in a different region or country
- 3) Information about the purchase of travel tickets and issue of a foreign passport in the name of the victim and at the expense of the employer, completion of the papers for studies;
- 4) Information about implication of the people who employ, enroll for studies in human trafficking or their exploitation or commission of such offences before;
- 5) Employment of the missing person by advertisement which may be used as recruiting evidence;
- 6) Disappearance of the minor child. The theory of the parent's implication in the child abduction with the intention to sell the child for exploitation should be verified.

We can speak about the fact of a crime in relation to the missing person, which is provided by Article 127 of Penal Code of the Russian Federation only after we exclude the following theories: accident, sickness, murder or intention to disappear⁹.

Search for the missing person is executed in the order established by the decree of the Ministry of Internal Affairs of the Russian Federation «About the organization and strategies of the search activity of the bodies of Internal Affairs» from May 5, 1993 No. 213.

⁹ See.: Polyakova M.A. Application of special knowledge in investigation of the crimes related to human trafficking and usage of slave labor: PhD in Law dissertation abstract. N.Novgorod, 2011. P. 10.

Case study 4. There is information about a human trafficking channel but there is no any information about the victims.

Such data may indicate few signs of a crime: recruiting or abduction of potential victims for their future sale; transportation of potential victims to the site of their exploitation; resale of the victims; exploitation of the victims.

We would like to accentuate one more time that the preliminary review should be carried out within the shortest possible period of time. We cannot make the goal of it to accurately establish the crime. According to Part 2 Article 21 of the Criminal Procedure Code of the Russian Federation in every case when the signs of a crime have been determined, it is required that the law enforcement agencies take measures which are foreseen by the law of the criminal procedure to reconstruct the circumstances of the crime (including incrimination of the individuals who are guilty of the crime). Practically the same part 2 Article 140 of the Criminal Procedure Code of the Russian Federation says — the grounds for opening of the criminal case serve the availability of sufficient data, indicating the signs of a crime». Consequently a delay in opening of a criminal case is allowed in one case only — if the availability of the signs of a crime is not obvious. In all other cases the criminal case should be opened immediately.

A delay in opening of a criminal case may cause the loss of the signs of the crime as a result of the activities of the criminals or due to objective cause.

When there is a lawful reason for opening of a criminal case, the detective must find sufficient data in the statement about the fact of a crime or materials on the case indicating the signs of human trafficking. The applicant who applies to the law enforcement agencies is warned about the criminal liability for misleading accusation according to Article 306 of the Penal Code of the Russian Federation and it is recorded in the protocol and signed by the applicant.

Sometimes the applicant provides audio and video recordings of his/her conversation

with the perpetrators to law enforcement agencies in order to verify the truthfulness of information. These recordings document the encounter with the recruiters, transporters or exploiters, passing of the material valuables, documents. In this case the fact of providing of the materials of this kind is documented in the protocol «Furnishing of the objects or documents by the applicant», which is drawn in the presence of the witnesses. This document is not procedural, since there is no such a procedural action provided by the law. According to Part 1 Article 183 of the Criminal Procedure Code of the Russian Federation, when it is required to seizure certain objects and documents related to the criminal case, if their location is known, the seizure is executed.

Right after the opening of a criminal case it is necessary to make a decision about the reasonability of engagement of the applicant in finding the location and detention of the perpetrators.

Engagement of the applicant in cooperation requires his/her written concern saying that he/she are assisting the law enforcement agencies at their own will and not under compulsion from the part of the latter.

If possible, in cases when the perpetrators came into contact with the relatives of the crime victim, it is advisable to set up surveillance with the purpose of identification of the perpetrators and possible site where the crime victim is held.

As it is fairly stated in the works on criminal investigation, the instruction should precede the engagement of the applicant. The instruction should be given by the field investigator from the service of criminal police on errand of the detective, and this field investigator is also responsible for liberation of the victim and search for criminals. First of all the applicant should be warned that he/she together with their relatives should keep their appeal to police in secret. The law enforcement agencies' employee, who accepts the application, should take all necessary measures to ensure safety of the provided materials. When the materials are promptly recorded in a duly order and according to the procedure, they may be used

not only as evidence in future, but as an additional guarantee that the applicant will not withdraw his/her evidence in the phase of preliminary investigation and court proceedings. One of the reasons why the criminal case may be terminated is the absence of the crime or absence of crime components in the deed (subclauses 1 and 2 of Article 24 of the Criminal Procedure Code of the Russian Federation) as a result of changing of the position of the applicant (usually of the crime victim) or due and procedural execution of the materials obtained on the stage of the opening of the criminal case. In relation to this, according to the authors of the scientific report «Prevention of human trafficking in the Russian Federation» it is possible to arraign all the members of the orga-

nized criminal group on a criminal charge, and to determine all the crime victims only when the cooperation between operational investigative divisions of militia (police) of different countries is efficiently organized. A special place in this work takes the Interpol National central bureau in Russia and its branches in the Ministry of Internal Affairs, Moscow Department of the Russian Ministry of Interior, Departments of Internal Affairs of the subjects of the Russian Federation¹⁰.

Establishment of a closer cooperation in the sphere in question at the international level is one of the efficient ways to solve such a problem as ensuring of prevention of one of the most serious contemporary crime, which is human trafficking.

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