

Investigation Mistakes in Investigation of Crimes of Foreign Citizens, Committed in the Territory of Russia

A. Sizov

Kursk Social Education Institute (affiliate of RSSU
(Russian State Social University)), (53, K. Marx Street, Kursk), Russia.

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Investigative and judicial errors along with expert mistakes are variation of errors in criminal trials. Often investigative and judicial mistakes are due to negligent attitude of investigators and trial to the requirements of the procedural form of the criminal procedure law, violation of the rights and legitimate interests of persons involved in the case. Of particular importance in eliminating a variety of investigative mistakes is judicial and medical examination. It is a tool of solution of specific issues of forensic medicine and is one of the types of forensic examination. The examination may be accompanied by inspection service, available to a specialist, and should be done in sequence: the part of the body not covered by clothing should be examined, then the clothes (if necessary), and then the rest of the body. If the examination is accompanied by inspection service, the Protocol on how to carry out all these activities is called the Protocol of examination and inspection service, a different Protocol on the inspection service should not exist. Medical examination of the suspect/accused is sometimes crucial. In this regard, unconditionally important is psychiatric examination, but sometimes, especially for children, assessment of somatic status may be crucial. Also sometimes of great investigative importance is identifying presence or absence of pathology of internal organs and predisposition of the suspect/accused. A great help in expert opinion can provide knowledge about the impact of diet and the effects of various drugs on the rheological parameters of human blood may be of great help in forming the expert's opinion.. It is difficult to overestimate accurate identification of genetic markers in the blood of an accused and the traces of blood on the items appearing in the case. Given the great advance of medical science, one should always use forensic medical examination during the investigation that allows. to minimize investigative and judicial mistakes based on its results.

Key words: The result, mistakes, crimes, foreign citizens, territory of Russia.

Modern norms of criminal and procedural law which define area, basis, regulating, carrying out and documentation of investigation, may be represented in law and informational models of

similar actions. .They contain legal programming information which obliges an investigator to strictly follow the law⁵. Practice of examination shows, that investigators by no means always correctly organize and choose the tactics of investigation in cases concerning foreign citizens and sometimes allow material mistakes. The said makes it necessary to examine problems of investigation mistakes, ⁶.

* To whom all correspondence should be addressed.
e-mail: ilmedv1@yandex.ru

Investigation and judicial mistakes represent a variant of criminal proceedings mistakes, as well as of expert mistakes. Moreover, investigation and judicial mistakes are due to negligent attitude of investigative and judicial practical workers to the requirements of the proceeding's form, of the criminal and judicial law, to violation of rights and lawful interests of the case participants..

Definitely, any unlawful or unfounded investigation or judicial verdict is a result of an investigator's (judicial) mistake, if there is no design. The notion of a investigation mistake should not be limited by the following attributes: some inevitable negative results of misjudgement and its official documentation – prosecutor's or judicial acts. For several reasons, independent of the investigator's mistakes, investigation mistake does not by all means lead to a wrong (unlawful) judicial verdict or to another material violation of rights and interests of the parties to the case. For example, due to sufficiency of proofs in the end it is often possible to take a right judicial verdict. Furthermore, mistakes made by the investigator in criminal case investigation are not always reflected in the according judicial or prosecutor's acts⁴.

Apart from that, an action or lack of action of a functionary in a situation which requires immediate actions, may prove to be wrong from the point of view of investigation situation the forming in the case. For instance, untimely election of a pre-trial restriction – arrest in the situation where such a measure is necessary, allows an accused to elope from investigation and from trial, eliminate of falsify proofs of his criminal activities. Untimely arrest of property of a guilty of property crime allows concerned parties to take steps to hide his property and consequently, leads to inability of compensation of caused by the crime damages, to violation of interests of the wronged person and the state⁹.

There are different points of view on the reasons of investigation mistakes in the literature. In particular, they refer to inadequate practical qualities of investigators, to absence of the necessary political, moral and some special qualities essential for the investigator's profession, their inadequate development, neglectful attitude to the rules of criminal and judicial law, faults of organization, overloading of investigators, lack of

offering of story theories, necessary for the case and inadequate verification of already offered story theories, reduction of area, passive verification of proofs (failure to take measures to eliminate contradictions of proofs, inability to create a reliable group of indirect proofs, formality of face-to-face interrogation, submission for identification and other verification activities) wrong explanation of proofs (overestimation of expert verdict, testimonies of victims, confessions or underestimation of denial of guilt by an accused person). Inadequate prosecutor's supervision and lack of attorneys' participation in preliminary investigation help to make investigation mistakes²⁰.

When an arrest is chosen as a measure of restraint, the accusation presented at the first stage of preliminary investigation often does not include all the facts in respect of which the investigation was carried out, and the second full accusation is presented not long before the end of the preliminary investigation, it violates the right for protection of the accused person⁴.

Investigators often create conditions making it difficult for a suspect/an accused or his advocate and to make application preventing them from appealing the refusal of permission to appeal. Nevertheless, appeals on the part of advocates may contain a notion of inaccuracies of the investigator, preliminary investigation violations, timely elimination of which could help to avoid new investigation of judicial mistakes. This statement is of especial importance in respect of those faults of preliminary investigation, which, due to the notorious specifics of trial investigation, could not be corrected in court (for example, due to the tactics of such investigation action as presentation of the accused person' face for identification in not permitted). This is partly due to imperfection of the criminal and judicial law, lacking concrete terms of hearing appeals, granting to a person effecting a criminal indictment the right to delay final disposal of an appeal made for an unlimited period of time, absence of a norm forbidding to direct a criminal case to trial until hearing of appealation is not finished¹⁹.

As a whole complex of judicial rights, prevention of subjectivism, abuse of discretion in taking judicial verdicts, provision of comprehensive, full, fair and objective investigation helps the suspects to realize their

right for protection. Let us illustrate the said on the example of interrogation of an accused/suspect foreign citizen. According to the law, the investigator must provide for the presence of the suspect accused of all investigation activities an advocate, whose actions are carried out in his client's presence²³.

The purpose of advocate's participation in interrogation and face-to-face questioning is to provide their completeness and comprehensiveness in view of legitimate interests of an accused person, to protect, to help to reveal the exculpating the accused or diminishing his amendability. Such help of an advocate is indisputably of a positive character. The advocate participates in the interrogation as an active and independent proving party. He uses the rights given to him by law and directly influences the investigator's activity; helps to prevent an accusation tendency. All these are positive aspects, which should objectively interest an investigator in search of ways of timely engaging an advocate in interrogation. The requirements of law on providing a suspect or an accused person with an ability to lead his protection by all unprohibited means require such behavior from the investigator^{23,24}.

An investigator as a person who's duty is investigation and its results, is responsible for interrogation organization. That is why he shall not lose his initiative in managing the whole process of investigation. Adjustment of the plan of interrogation with the advocate present in prospect is quite acceptable. At that, the advocate has a right to ask the investigator to adjust this or that questions in consideration of personal qualities of the interrogate, to offer additional evidence, not to ask him specific questions, not directly connected with investigated crime. All these actions are fully in accord with the task of abiding by suspect's rights and help to establish psychological contact with the interrogate, to prevent investigation mistakes and to succeed in achieving the goals of interrogation²⁵.

An investigator may make mistakes not only in interrogation of a foreign citizen, but in other kinds of investigation as well. For instance, according to the requirements of criminal and judicial law an investigator may announce to a suspect or an accused person a decree on

appointment of legal enquiry and explain to him his rights in connection with legal enquiry. Obviously, it is desirable to present a full translation of the decree of a commission of expertise to a foreign citizen who does not speak the language, in which the proceedings are carried out¹⁷. Similarly, it is desirable to realize his full right to make himself aware of the expert testimony or to expert' refusal to present a testimony. This solution would provide for higher degree of protection of rights and lawful interests of a foreign citizen. For the same purpose, the investigator may place in a special memo the foreign citizen's rights concerning the appointment of legal testimony⁸.

Forensic medical examination is especially important for elimination of investigation mistakes⁶. It is an instrument of solution of special problems of forensic medicine and is one of the spheres of legal testimony. The testimony may be followed by inspection of clothes which the examined person has on and shall be carried out in a certain sequence: first, uncovered parts of the body shall be examined, and then (if necessary) – the clothes, and then other parts of the body of the examined person. In case examination is followed by clothing examination, protocol of all these actions is called a Protocol of examination and examination of clothing, there is no need to compose a separate protocol on clothing examination. Sometimes, medical examination of a suspect/ accused is of especial importance¹⁰. In this context, a psychiatric expertise if unconditionally crucial^{17,18}, but sometimes examination of somatic state is of utmost importance, especially for children¹⁶. Sometimes revealing of internal parts of the body of a suspect/ accused if revealing of presence or absence of pathology or an aptitude to it^{21,22}. Information on diet influence^{7,12} and influence of different drugs on rheologic parameters of human blood could be of important help in the expert verdict^{11,13,14,15}. It is difficult to overestimate an exact identification of genetic markers in the blood of an accused person and of blood traces on the objects, present in the case¹⁻³. Considering a great progress of medical science, in the course of investigation it is always important to turn to forensic examination, which allows, based on its results, to minimize investigation and judicial mistakes²³.

Let us note, that a suspect/accused has a

right to be present at forensic examination performance by the investigator's consent. If a suspect, accused foreign citizen does not speak the language in which the proceedings are carried out, in this case he shall also be provided with a translator.

Carrying out of forensic examinations may also require to acquire samples for comparative examination from persons concerned with the case. If these persons have no immunity of criminal jurisdiction of Russian Federation, the given judicial action shall be held in general order, provided for by criminal and judicial law. Nevertheless, one should consider the following factor. Traditions and superstitions of some countries do not allow transfer of human wastes to strangers, including his blood, hair, sperm, slices of nails or other objects of forensic importance. According to overspread beliefs, these biological objects could be used directly or with magic help to harm theirs source – a person. That is why the attempts to get examples could meet with unmotivated from the investigator's point of view antagonism, and compulsory measures, allowed by law in this case could lead to a heated conflict, capable to complicate significantly the process of investigation. In such a situation, the investigator should find out real reasons of resistance. If they belong to the sphere of religious or cultural perceptions of a person, he should try to change a person's position in this area using detailed explanations. For this purpose, for instance, authoritative for foreign citizen persons – his co-religionists or his countrymen with more progressive views could be invited⁵.

Thus, avoidance of investigator's mistakes is an important task of an investigator, which could materially distort the real picture of foreign citizen's crime. If not recognized by competent persons in the early stages of the process, it could lead to serious judicial mistakes, which express themselves in unlawful sentence adjudicated by the court, and unfounded verdict on the case.

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