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**CRIMINAL PROSECUTION OF PERSONS WHO DO NOT SPEAK
THE LANGUAGE OF CRIMINAL PROCESS**

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Abstract

With the increasing number of foreigners and stateless persons in the sphere of criminal proceedings, there are problems with applying the principle of the language of the criminal process in the pre-trial phase. This article analyzes investigative and court practice and provisions of the current Criminal Procedure Law on the Language of Criminal Process. We also take into consideration the provisions of the European Court of Human Rights. We aim to justify the necessity to adjust several norms of the Russian Code of Criminal Procedure and the Penal Code of the Socialist Republic of Vietnam in order to improve them as well as to increase the quality and effectiveness of criminal prosecution.

Keywords

Pre-trial phase – Legal prosecution – Language of criminal process – Investigator – Court

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Introduction

The provisions of the Constitution of the Russian Federation (art. 19 para. 2, art. 26, para. 2) and the current Criminal Procedure Law on the Language of Criminal Process (art. 18, art. 46, art. 47) comply with the international norms (art. 14 para. 3 of the International Covenant on Civil and Political Rights)¹. However, the data from law enforcement practice in the pre-trial phase show that there are numerous applications and complaints on the violation of the principle of the language of the criminal process. Therefore, the hypothesis is: What is the reason for that?

Materials and methods

The empirical basis consists of the results of 89 criminal cases; applications and complaints to the Constitutional Court of the Russian Federation and the European Court of Human Rights; questionnaire results among 75 investigators and detectives, 60 members of the teaching group of the Ministry of Internal Affairs of the Russian Federation, Moscow University of the Ministry of Internal Affairs, and the People's Police Academy in Vietnam. The analytical research method has enabled us to draw several essential conclusions that resolve the question which serves as the hypothesis for this study.

Results analysis

There are objective indicators from the official statistics on the increasing number of crimes committed by foreigners or stateless persons or by those who do not know the language of prosecution. The current criminal procedure law stipulates general norms on the language of the prosecution that require more detail. Below, we present the analysis of the results in the form of recommendations for pre-trial situations when the persons do not know or do not have sufficient knowledge of the language of the criminal process:

1. The investigator or detective shall have the skills that will allow deducing the persons who do not have sufficient knowledge of the language of the criminal process. Thus, such persons may use art. 18 para. 2 of the Criminal Procedure Code to justify their claims to violate the Criminal Procedure Law regarding the services of interpreters. Usually, this regards the persons who aim to conceal their knowledge of Russian by appealing to their ethnic identity or other country's citizenship.

To resolve this issue, investigators and detectives shall appeal to regulations stipulated in the Decision of the Constitutional Court of the Russian Federation No. 243-O on 20 June 2006. It states that the right to appeal to the use of the native language in the criminal process in Russia does not exclude the legislator's right to impose the conditions and procedures for the implementation of the aforementioned right that will not interfere with proceedings being carried out within the reasonable timeframe as well as will not impede the rights and freedom of other parties. The preliminary investigation authorities, prosecutor, the court can dismiss the application on providing a party with the services of interpreters if the case files prove that the application violates the abuse of rights².

¹ United Nations, The International Covenant on Civil and Political Rights. 1966. Available at: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

² The Decision of the Constitutional Court of the Russian Federation No. 243-O "On the application dismissal filed by M. V. Cherepovskiy on the violation of constitutional rights by art. 18, para. 2 of the Criminal Procedure Code of the Russian Federation". 20 June 2006.

2. It is important to take into consideration the proof from the judicial practice: the appeal filed by the accused Ju. (the citizen of Uzbekistan whose mother is Russian, and the father is Korean) was declared unfounded. The accused Ju. did not agree with the court order and stated that he did not receive the interpreter's assistance in the processing of application on the preventive measure, but his application on interpreter's assistance was dismissed. The court files prove that the accused Ju. studied Russian; he also stated that he knew Russian and that they spoke three languages in his family, namely Russian, Uzbek, and Korean. He lived in Russia since 2003, graduated from the university in Moscow where lessons were taught in Russian. In court, the accused spoke Russian fluently, filed applications, understood the other party's statements, did not need the interpreter's services, and was convicted of the crime by the Regional Court of Saint-Petersburg in 2009. The aforementioned circumstances and court files, the Court decided that in this case, the citizenship of another country does not imply the need in the interpreter's services since the person had sufficient knowledge of the language of the criminal process³.

3. According to the ECHR decision on the 1978 case Luedicke, Belkacem and Koc v. the Federal Republic of Germany, the court decided that the arrest report would serve as a document necessary for the suspect to understand to have the right for a fair trial. Thus, this called for the free services of an interpreter, and the grounds for arrest required translation and interpretation at public expense.

The ECHR's decisions on the compulsory nature of translation to the language that the suspected or accused knows. In some cases, there was a compulsory translation (Kamasinski v. Austria, para. 79; Hermi v. Italy, para. 68). In other cases, the court decided that interpretation would suffice to prepare the accused for the trial (Kamasinski v. Austria, para. 81; Husain v. Italy (dec.)). The peculiarities of the 1989 case Kamasinski v. Austria are as follows: the ECHR dismissed the complaint of the accused on not being provided with some details on the charges in his language since the State did not provide a legal aid lawyer who would know both languages. It is noteworthy that in Russian legal realia, according to art. 71, para. 1. part 1. of the Criminal Procedure Code, such a situation would not occur since the defender shall not have a right to participate in the criminal process if they have participated in this process earlier as an interpreter.

In some countries, the regulations of criminal procedure code unequivocally stipulate the required form of translation or interpretation. For instance, according to § 114b of the Criminal Procedure Code of Germany, the accused who is under arrest shall receive information on his rights in the written form in a language they understand. If it becomes obvious that written explanation does not suffice, they shall also receive an oral explanation. It is also applicable when it is impossible to provide the accused with a written explanation. Nevertheless, it shall be provided later if there is an opportunity. The accused shall confirm in writing that they have received the explanation. If they do not agree to do that, it should be included in the case materials⁴.

4. In the arrest report compilation, the rights of the accused, the grounds, and other circumstances of detention shall be translated by the interpreter to a language that the accused understands. The interpreter can fill in the part of the arrest report for the accused.

³ The Decision of the Leningrad Regional Court No. 22-896/2010. 13 May 2010.

⁴ P. Golovnenkov y N. Spitsa, Code of Criminal Procedure of the Federal Republic of Germany - Strafprozessordnung (StPO). Electron. text given (Potsdam: Universitätsverlag Potsdam, 2012).

The investigator or detective shall remember that the aforementioned legal information shall be transmitted in a way comprehensible for the accused. The language shall be plain and shall include legal and factual grounds for the arrest, and not complicated legal vocabulary. For example, in the case *Fox, Campbell and Hartley v the UK*, the ECHR decided that the information provided by the law enforcement officer who arrested the suspects was not sufficient. The law enforcement officer explained that they were arrested on the grounds of a particular law and suspicion of terrorism. Instead, they shall have received the explanation of reasons why they were suspected of terrorism due to their alleged involvement in criminal acts and forbidden organizations.

After the compilation of the arrest report, the interpreter shall receive its copy and, according to art. 18, para. 3 of the Criminal Procedure Code of the Russian Federation, translate it into the native language of the suspect or a language they understand.

Thus, the investigator violated the requirements of the art. 18, para. 3 of the Criminal Procedure Code of the Russian Federation when the accused I. R. A-v, a Tajik, did not receive the copies of the forensic files translated into his native language. Also, the arrest report does not provide any information if the interpreter was provided⁵.

The officials of the pre-trial investigation authorities, the prosecutor, and the court shall take into consideration the decision of the ECHR on the cases *Kamasinski v. Austria*, para. 74; *Hermi v. Italy [GC]*, para. 70; *Protopapa v. Turkey*, para. 80 and required the responsible authorities to not only appoint the interpreter but also monitor the quality of translation and interpretation which will affect the effectiveness of the principle of language in the criminal process.

The prosecutor received a criminal case on R. who was accused of a crime stipulated in art. 111, para. 2, part “h” of the Criminal Procedure Code of the Russian Federation. It was revealed that R. was a citizen of the Republic of Tajikistan, an ethnic Uzbek. During interrogation, he explained that he knows the Tajik language and wanted to testify in it. In such circumstances, the investigator called for an interpreter. When the prosecutor studied the case, it was found out that there were English words in the text of the indictment in Tajik (which is required to be given to the accused) which was inadmissible and raised doubts in the adequacy of translation. These circumstances violated R’s right to defense, inhibited the sending of the case to court. Thus, the prosecutor returned this case to the investigator for additional investigation and elimination of the revealed deficiencies⁶.

Conclusions

Art. 18, para. 2.1 of the Criminal Procedure Code of the Russian Federation shall read as follows:

“2.1. The suspect or the accused who has inadequate or no knowledge of the language of prosecution shall be informed promptly in a language he or she understands on the grounds, motives, and other circumstances of the arrest or the grounds of charges brought against him or her”.

⁵ The analytical summary on reasons for the return of cases for additional investigation to the internal affairs investigations units in Moscow (the data for the first six months 2013).

⁶ The analytical summary on reasons for the return of cases for additional investigation to the internal affairs investigations units in Moscow (the data for the first six months 2015).

Art. 18, para. 3 of the Criminal Procedure Code of the Russian Federation shall be elaborated and read as follows:

“3. If the Code provides for investigation and court documents for the mandatory service of investigative and court documents on the suspect, the accused or other parties to criminal proceedings, these should be translated into the native language of the party concerned or a language which he or she knows within 24 hours”.

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