

# APPLICATION OF PROCEDURAL INTERVIEW DURING PRE-TRIAL INVESTIGATION OF CORRUPTION CRIMINAL OFFENSES COMMITTED IN THE FINANCIAL SECTOR

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**Annotation.** One of the conditions for the survival of human society is the consistency of actions between its representatives, which is achieved through the exchange of information. Communication is the basis of any collective process, and pre-trial investigation from a certain point of view is a legally regulated process of communication between participants in criminal proceedings, with a specific goal, outlined rights and obligations of participants.

At the current stage of development of society, financial services are an indispensable element of life. Financial institutions that provide these services, and the National Regulator, which supervises their quality, are present every day in the life of every citizen. Corruption criminal offenses committed in the financial sphere with the participation of officials of financial institutions and the National Regulator, instantly affect the broad masses of citizens, undermine trust in the financial system, government, and impede the development and existence of society as a whole.

The success of a pre-trial investigation of a corruption criminal offense committed in the financial sector directly depends on the possibility of obtaining significant information from the participants in the criminal process regarding the nature and form of the financial transactions carried out, which provides an understanding of the time, place, and circumstances of the loss of control over funds.

Research into the use of procedural interviews as an effective means of procedural communication during a pre-trial investigation is relevant and necessary. Effective research will provide an opportunity to improve the results of pre-trial investigations of corruption criminal offenses committed in the financial sector with the participation of officials of financial institutions and the National Regulator.

**Key words:** financial institutions, financial instruments, interrogation, procedural interview, National Bank of Ukraine, national regulator, special knowledge, control functions.

## 1. Introduction.

Methods and means of procedural communication must be legal, effective and ensure the result. The evidence obtained as a result of procedural communication must be admissible, the methods of obtaining it must be such that they do not violate the rights of the individual.

Procedural interview is a modern method of procedural communication, focused on obtaining significant information and evidence. Unlike traditional interrogation, procedural interview is based on the principles of professional training of the interviewer as a communicator, unconditional observance of the rights of the participants in this investigative (detective) action.

The use of procedural interview during pre-trial investigation of corruption criminal offenses committed in the financial sector provides new opportunities for obtaining evidence and significant information, but requires significant training, communication skills and special knowledge.

## 2. Literature review.

Scientific works close to the research topic were carried out by J. Eastwood, M. Schollum, D. Carr, R. Bull, S. Moston, K. Kepinska-Jacobsen, B. Snook, E. Ferraro, T. Williamson, B. Pitt-Payne, E. Griffiths, R. Fisher, E. Geiselman, I. Fasing. Among domestic researchers, A. Orleans, Yu. Belousov, V. Lutsyk, S. Braverman, M. Maistrenko should be mentioned.

It should be noted that the methods of conducting procedural interviews and scientific research on the topic have been studied mainly in relation to general criminal crimes, terrorism, and war crimes. The issue of using procedural interviews during pre-trial investigations of corruption-related criminal offenses committed in the financial sector is insufficiently researched.

**3. The purpose of this article** is to study the effectiveness of the use of procedural interviews during pre-trial investigations of corruption-related criminal offenses committed in the financial sector with the participation of officials and employees of financial institutions and their regulators.

## Materials and methods.

The study of the use of procedural interviews in the pre-trial investigation of corruption criminal offenses committed in the financial sector began with the selection of the research topic. The next stage was the determination of the purpose of the study. Considering the above, the selection and study of professional literature and the opinions of scientists were carried out, and the methods of cognition were determined, namely:

- Analysis and synthesis. The path of logical reasoning from greater to lesser, from general to particular always has the ability to establish the features of the phenomenon under study inherent in individual, relatively non-mass cases. At the same time, the reverse process allows not to lose the mandatory elements of phenomena and processes, to remain within the limits and boundaries of broader philosophical concepts and current laws.
- Comparative legal method. It was used when studying legal characteristics, common and individual features of procedural methods of communication and obtaining information when providing evidence.
- The dialectical method as a universal method of thinking and action provided the opportunity to study evidence not only through the prism of legal norms and scientific thought, but also through the practical aspects of its creation and use.

This contributed to the disclosure of the topic under study, obtaining understandable and applicable conclusions of the study.

## 4. Main presentation of the material.

According to Article 84 of the Criminal Procedural Code of Ukraine, testimony is included in the list of procedural sources of evidence [1]. According to Article 95 of the Criminal Procedural Code, testimony is information provided orally or in writing during interrogation by a suspect, accused, witness, victim, or expert regarding circumstances known to them in criminal proceedings that are relevant to these criminal proceedings [1]. Testimony is provided by participants in criminal proceedings during a procedurally defined form of communication, namely interrogation, the rules for which are determined by Article 95 of the Criminal Procedural Code of Ukraine [1].

In criminal proceedings, the main source of evidence is testimony itself.

National and international legislation provides for a significant number of norms prohibiting the use of pressure and torture. This is provided for by the Constitution of Ukraine [2], the Criminal Procedural Code of Ukraine [1], the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [3], Resolution 47/33 of the UN General Assembly "Declaration on the Protection of All Persons from Enforced Disappearance" [4], and the European Convention on Human Rights [5].

All of these norms are a reaction to the systematic use of extra-procedural methods of communication, pressure, and torture. This is a consequence of the fact that the purpose of interrogation for a law enforcement officer is to achieve the goals of the pre-trial investigation by obtaining a person's confession to committing a crime, rather than obtaining evidence. The reason for this is, among other things, psychological factors. This subsequently leads to the issuance of unlawful (erroneous) judicial decisions.

Research on wrongful convictions shows that the problems of "tunnel vision" or "confirmation bias" (a subconscious tendency to look only for information that "fits" and/or to ignore information that does not confirm what the interviewer is convinced of) lie at the heart of judicial errors in almost all cases [6].

The purpose of the investigator/detective during interrogation is to obtain information that is significant for the criminal proceedings, and not the actions of the interrogated person aimed at completing procedural communication at any cost. A person who does not want to communicate will not provide meaningful testimony. A witness or suspect who has been subjected to psychological pressure or torture will say anything to complete the interrogation. Completion of communication as the goal of the interrogated person's actions does not bring the necessary result, and should be a red flag for the investigator/detective, indicating the ineffectiveness of his/her actions. Recognition of evidence as inadmissible, as a result of the use of extra-procedural methods of communication, at the stage of trial, calls into question the outcome of the entire criminal proceedings.

There are no circumstances that justify intimidation, threats, cruelty or violence of any kind, physical or psychological, against a suspect in order to obtain information, incriminate another person or force a confession. This is not only unethical, but also contrary to the ethical standards of professional law enforcement, and violates national and international law. It simply does not work [7].

The basis of successful procedural communication is the unification of the purpose of the actions of both participants – and this should be the main hidden goal of the interviewer's work.

Interrogation, as a traditional form of procedural communication, is based on the exercise of the power granted by the law enforcement officer, procedural coercion. The interrogation procedure is intermittent, inconsistent, usually incomprehensible and stressful for the interrogated person. The procedure is full of formalities, usually without the use of video recording. [8]

This may be the reason for the open or hidden refusal of procedural communication and the provision of significant information.

After understanding the ineffectiveness of using traditional procedural communication, the question arose of the need to use other, fundamentally new methods of procedural communication.

Procedural interview is a solution that Great Britain, Canada, Australia, New Zealand, the Netherlands, Norway came to in search of more effective and humane ways of investigating criminal offenses [9].

The procedural interview method destroys the myth about the effectiveness of harsh interrogation methods and replaces them with more effective methods of preventing, investigating, and solving crimes [10].

The main purpose of the procedural interview is not so much to obtain a confession from the suspect or nominal information from the victim or witness, but rather to collect accurate, reliable, truthful data. [11]

The procedural interview model was first developed and implemented in the legislation of the United Kingdom in the 1990s in response to the large number of forced (confirmed) confessions of guilt and the associated unjust sentences in the 1980s and 1990s. [12]

Today, there are several models of procedural interview based on related principles and similar communication methods. For example, the PEACE model has been implemented in the legislation of Australia, Canada, and New Zealand. Scotland has also introduced a procedural interview model on its territory, called PRICE, which is more relevant to local legislation and improved. A similar model of procedural communication in Norway, derived from PEACE, was called KREATIV. [6]

All of them are quite similar in structure, stages of implementation, principles of construction and goals, mandatory observance of the rights of the individual during the implementation. The most appropriate arrangement of the stages of a procedural interview for a pre-trial investigation of corruption criminal offenses committed in the financial sector, with the participation of officials of financial institutions and the National Regulator, is the PEACE model in the sense of the KREATIV model:

1. Planning and preparation: physical preparation; case preparation; psychological preparation.
2. Introduction and contact: beginning of recording; engagement and explanation; legal requirements; reasons and procedure.
3. First free-form presentation: introduction; open-ended questions; active listening.
4. Clarification and disclosure: structure of discussion of topics; questions; strategic disclosure of evidence.
5. Closing the interview: summarizing; informing; positive conclusion; end of recording.
6. Interview evaluation: information; investigation; interviewer. [12]

The application of the specified methodology during the pre-trial investigation of a corruption criminal offense committed in the financial sector, with the participation of an official or head of a financial institution, its regulator, has its own specifics at each of the stages.

An official, head of a financial institution or the National Regulator as a participant in criminal proceedings, the subject of the investigation of which is a corruption criminal offense, will not be a simple interlocutor. These persons are intellectually developed professionals with financial capabilities, acquaintances among the powerful strata of society and law enforcement officers, and experience in managerial activities. It should be noted that the financial sphere, as a direction of economic activity, is closed, has complex specialized legislation and specifics of activity, but is strictly vertically integrated and controlled, accountable, and synchronous in its activities. The duties and capabilities of the National Bank as a regulator of the financial market should always be taken into account.

Stage 1. At the planning and preparation stage, an employee, who has sufficient specialized knowledge in the financial sector, understands its structure, participants, relevant legislation, the specifics of the activities of a particular financial institution, and the powers of the National Regulator should be selected as an interviewer. The interviewer should be provided with all available materials regarding the commission of the offense and time to study them. It is necessary to investigate the circumstances of the offense, understand the meaning and purpose of the actions that resulted in the loss of control over funds, the financial instruments involved, the institution's employees involved and their job responsibilities.

It is necessary to study the respondent's personality. Investigate open sources of information, use the existing experience of colleagues who have already worked with him/her, his/her colleagues, in relation to the financial institution within the framework of other proceedings.

An appropriately equipped office, which facilitates a confidential conversation, should be prepared for the interview. Taking into account the need to quickly operate with significant amounts of data and make decisions

during the interview, it is advisable to involve a colleague in the interview who will draw the interviewer's attention to illogical moments in the story, errors, check the application of legal norms, etc. At this stage, a general strategy for the interview is prepared, the evidence that will be used is determined, the sequence of their use is determined. Possible versions of events are determined and worked out, and officials who may be involved in them are outlined. All of the above circumstances should be worked out during the interview.

Stage 2. It involves getting to know each other and establishing trusting relationships. It is advisable to explain the reasons and necessity of the meeting, to provide information about the criminal proceedings, to explain to the person his/her rights. One should try to involve him/her in the conversation, to give him/her the opportunity to talk. Explain the role of the colleague involved, to inform about the use of video recording. It is advisable to use video recording of the investigative action, because of the possibility of viewing it, tracking the person's reactions to questions and the evidence presented. Using video recording saves time, allows you to be in constant contact, and track reactions.

Stage 3. It involves offering the person himself/herself to tell about the circumstances of the situation that he/she knows in accordance with the subject of the criminal proceedings, posing open questions. There may be several options.

Option A – the most optimal – a real story about the events. Most often, it can be a place for witnesses who, in their opinion, are not in danger, experts.

Option B – an attempt to provide testimony that is convenient for themselves. In this case, the person should have a version of events that is convenient for him or her to tell. In these circumstances, the interviewer should have applicable knowledge about the person, special knowledge about the field of activity and the circumstances of the offense, in order to avoid possible information manipulation. In any case, the person should be allowed to finish, use the active listening technique, and understand the purpose of providing this particular version of events.

Option C – the person agrees to give evidence, but asks to be asked questions, either orally or in writing. The investigator may be offered a list of questions, exercise the right to answer in writing himself/herself, or offer to provide the results later. In fact, this is a manipulative form of behaviour aimed at obtaining information about the progress of the pre-trial investigation. In this case, a decision should be made immediately on the number and scope of questions that the investigator asks in order to avoid the actual disclosure of information.

Option D – refusal to give evidence in any way. The most negative scenario. The investigator/detective will not receive any information about the event under investigation, and no personal impressions about the person due to the minimalism of communication.

Stage 4 – in the case of a person giving testimony to the investigator, it is advisable to ask clarifying questions in order to structure or break them down. It is at this stage that the disclosure of evidence should be carried out, according to the chosen strategy. The stage is the most complex, associated with the processing of large amounts of information, which records the understanding of the testimony provided, cuts off unconfirmed versions of events.

Stage 5 – completion of procedural communication. The interviewer can summarize the conversation, analyse the information received. The process of completing communication is of great importance from the point of view of possible subsequent meetings and communication. The completion of procedural communication should be clear, logical and understandable for the participants. At this stage, audio and video recording is completed.

Stage 6 – the last. Like stage 1, it takes place without the participation of the respondent, but with the participation of colleagues of the investigator/detective or his/her superintendent, in terms of assessing the information received and the interviewer's actions.

In the case of conducting a procedural interview with the participation of officials of financial institutions and the National Regulator, the key criterion should be the investigator/detective's possession of special

knowledge, as well as his/ skills as a communicator. In the absence of the above, the investigator/detective will not be able to conduct a procedural interview at the required level, starting with the preparation stage: he/she will not understand the essence of the offense, will not be able to prepare a conversation strategy, develop possible versions of the version of the crime, use existing financial documents, information on the transfer of funds. This potentially allows the respondent to provide the investigation with information convenient for it without the interviewer understanding the real picture of the event.

## 5. Conclusions.

A procedural interview with the participation of officials of financial institutions and the National Regulator provides broad procedural opportunities, but requires the interviewer to have high-level communication skills, financial education and experience, knowledge in the field of accounting, knowledge of financial instruments, the functioning of payment systems, currency transactions, cross-border payments, securities of various types. The financial system is a closed, highly specialized field of activity, where each action has its own causes and consequences, and only the circulation of cash and alternative means of payment is not reflected in it, is not tracked and is not accounted for. Possession of special knowledge about its activities provides the opportunity to understand explicit and hidden processes, combine them into schemes with a single goal, executors and beneficiaries, and understand the motives of their activities.

Procedural interviewing has been repeatedly used by employees of the National Anti-Corruption Bureau of Ukraine during pre-trial investigations of corruption criminal offenses, in particular with the participation of officials of financial institutions and the National Regulator. The effectiveness of the use of procedural interviewing has been proven by the results of pre-trial investigations. In its activities, the National Bureau respects the rights of participants in criminal proceedings, is guided exclusively by the legislation of Ukraine and the highest standards of evidence, and procedural interviewing meets the specified standards.

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