

Specific Features of the Debriefing and Confrontation in Migrant Smuggling Investigations

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Abstract

The present article focuses on the specificity in conducting of debriefing and confrontation in migrant smuggling investigations, exploring this topic from the perspective of forensic science. Debriefings are essential in the investigation of these crimes, having a crucial role not only in establishing the facts and identifying the actors, but also in planning further prosecution and special investigative measures.

The main aim of the research was to identify and clarify legal conflicts, as well as to establish a correct tactic for conducting debriefing and confrontation in migrant smuggling offence. This tactic is aimed at formulating precise recommendations for the prosecuting authorities so that the effective application of the debriefing methodology will lead to positive results, contributing to establishing the truth and uncovering crimes. The research provides these recommendations not only to facilitate the work of prosecutors but also to provide meaningful support in the fight against crime.

Keywords: *debriefing, confrontation, prosecution, victim, witness, illegal migration, smuggling of migrants.*

Introduction. Illegal migration is one of the major challenges of the 21st century, affecting states globally. It is a complex phenomenon, amplified by economic, social, political and armed conflict factors. In the current global context, illegal migration has become a growing problem, particularly in the wake of the humanitarian crisis triggered by the conflict in Ukraine. Millions of people have been forced to flee their homes, including individuals who have resorted to organising illegal migration in an attempt to earn easy money.

The smuggling of migrants involves a well-structured network of smugglers who exploit human vulnerabilities and legal loopholes. They take advantage of the desperation of those affected by conflict or precarious economic situations, offering false promises of safety and prosperity. In particular, the conflict in Ukraine has opened up new avenues for illegal migration networks, which have developed more sophisticated routes and intensified human trafficking activities. These networks have rapidly adapted their modus operandi to the new conditions created by the war, facilitating illegal migration amid massive refugee flows.

In this context, conducting debriefings in the investigation of crimes related to migrant smuggling becomes an essential part of the legal process. Debriefings must be conducted carefully, respecting legal principles and the fundamental rights of the persons involved. The competent bodies must gather conclusive evidence, identify the links in trafficking networks and protect victims. In the context of the conflict in Ukraine, these debriefings become even more difficult, given the complexity of the situation and the large number of people involved. However, they remain essential to combat migrant smuggling effectively and to ensure that all aspects of the law are respected.

Conducting proper debriefings in such cases is a crucial step in ensuring justice and deterring criminal activities that exploit human vulnerabilities.

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Applied methods and materials. Theoretical, normative and empirical materials were used in the realization of this publication. Also, the study of the subject was possible by applying various methods of scientific research, specific to forensic theory and doctrine, such as: the logical method, the method of deduction and induction, comparative analysis, systemic analysis, among others. The theoretical and legal foundations of the scientific article are represented by the normative regulations in the field of criminal procedure and forensic, with reference to the debriefing procedures.

Results and discussions. "The debriefing is an evidentiary procedure, the purpose of which is the acquisition and fixing by the prosecuting body (the court), in accordance with the legislation in force, of the statements of the person heard regarding the information known to him/her and which forms part of the subject of the evidence in the criminal case"¹.

We support the views of those authors who consider that the debriefing includes three basic components: procedural (criminal procedural law regulation of the debriefing), forensic tactics and forensic psychology². It is worth mentioning here that these three components apply simultaneously because by applying, for example, only one of them, the prosecuting body will not achieve positive results in the debriefing and the investigation risks being ineffective.

According to Art. 113 para. (1) and (3) of the CPC, "*in case of discrepancies between the statements of actors involved in the same case, these persons shall be confronted, including those whose statements are unfavourable to the suspect/the accused, if necessary, in order to find out the truth and remove the discrepancies. The persons confronted shall be heard in accordance with the provisions relating to the debriefing of a witness or the accused, which shall be applied as appropriate, depending on the procedural status of the persons confronted.*" Bearing in mind the legal provisions invoked, we will focus only on the debriefings, since the confrontation is carried out according to the same rules and has practically the same tactics as the debriefings, considering its particularities.

As mentioned by some authors, debriefing is the oldest and most widely used means of evidence collection in criminal investigations³, referred to as the "eyes and ears of justice"⁴.

We support this position because the debriefing, in the case of investigation of the migrant smuggling, is the main procedure of proving the guilt of the perpetrator and establishing the evidence, therefore the success of its conduct greatly influences the outcome of the investigation and the establishment of the truth in the case. The debriefing, in the cases investigated by us, is conducted every time. In some cases, the debriefings constituted 78% of the number of procedural actions carried out, and in others, in particular when a new indictment was brought under Article 362/1 of the Criminal Code, the debriefings were the only evidence (100%).

As an example, constitutes the crime committed in the period of time from May 2021 until the commencement of criminal proceedings, in which the DV citizen, being a member of an organized criminal group, by mutual agreement and by prior agreement with other persons, being in the Republic of Moldova and Italy, previously sharing roles, acting with direct

¹ Osoianu Tudor Osoianu, Ostavciuc Dinu, Odagiu Iurie, Rusnac Constantin, Tactics of criminal prosecution actions, Cartea Militară Publishing House, Chisinau, 2020, p. 153.

² Volonciu N. (ed. coord.), The Code of Criminal Procedure, 3rd Edition, Bucharest, 2017, p. 294; Osoianu Tudor Osoianu, Ostavciuc Dinu, Odagiu Iurie, Rusnac Constantin, Tactics of criminal prosecution actions, Cartea Militară Publishing House, Chisinau, 2020, p. 153.

³ Stancu E., Tratat de criminalistică, 5th edition, revised and added, Universul Juridic Publishing House, Bucharest, 2010, p. 409.

⁴ Tudorache A., Criminalistica, Nomina Lex Publishing House, Bucharest, 2010, p. 179.

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intention, determining the plan of criminal activity at cross-border level and pursuing the aim of obtaining direct or indirect financial or material benefit, following the migrant smuggling from the Republic of Moldova to Italy of citizens of the Republic of Moldova, have created a well-organized criminal scheme, which consists in preparing and creating the conditions for obtaining false identity documents from Romania and other states, in order to organize, transport, entry and stay of foreign citizens in Italy, who are neither citizens nor residents of this state⁵.

By its very nature, the debriefing is a complex prosecution, often conducted in a so-called adversarial situation. Achieving the objectives of the debriefing depends on the ability of the prosecuting officer and the prosecutor to change this situation. This requires a high level of professional skill, knowledge of psychology and the practical ability to understand the psychological characteristics of the person being heard, as well as knowledge and skilful use of various tactics during the debriefing. Debriefing is an art that every prosecuting officer and prosecutor has to learn on a daily basis. In our opinion, only by reading a debriefing you can appreciate the professionalism of a person conducting a prosecution. Properly conducted debriefings account for more than 60% of a successful investigation.

"The complexity of the debriefing arises not only from the fact that the prosecuting officer's opponent is a person who, in some cases, does not wish to state the truth or who, in general, does not wish to give statements. But also by the fact that in the statements submitted by the person, who cooperates and wishes to communicate everything he knows, there may be errors and distortions, illusions and fictions which must be noted in good time during the debriefing and taken into account when assessing and using the statements"⁶.

Debriefing tactics are therefore scientifically based methods, developed in forensic science and tested in judicial practice, which do not contravene the law. In addition, they are methods of establishing psychological contact with the interviewee, neutralizing the negative position of the interviewee and exerting psychological influence on the interviewee with the aim of obtaining complete and truthful statements. The tactics of debriefing methods differ depending on the content and objectives of their application. However, of all these methods, some are universal as they are applied in the conduct of any debriefing.

These debriefing tactics include: conversation, reducing tension, waiting, utilizing the positive qualities and weaknesses of the person being heard, surprising with questions or abrupt presentation of evidence, distraction, inertia, repeating the debriefing, creating an exaggerated image of the prosecuting officer's level of awareness, etc. Forensic science has analysed them and correlated them with the requirements of legality. However, the crime-fighting practice of recent years shows that the majority of prosecuting officers have not mastered this tactical arsenal of forensics, know little about the specific tactics and situations in which they are applied, and often use inadmissible methods that violate legality.

Preparation for the debriefing is of enormous importance. If the prosecuting officer has not determined the subject of the debriefing, has not drawn up a list of specific questions to be answered and has not thought out clear formulations of them, then he will obviously lose the possibility of obtaining exhaustive information. Watching the prosecuting officer muddle through, frantically flipping through the pages of the criminal case file in search of necessary

⁵ Criminal case no. 2022870278, in which the criminal prosecution was initiated on 10.03.2022, by the criminal prosecution body of the Ministry of Internal Affairs, established within the General Inspectorate of Border Police, according to the elements of the offense composition provided by art. 362¹ para. (3) letter a) Criminal Code.

⁶ Белкин Р.С., Тактика допроса / в кн.: Лившиц Е., Белкин Р.С., Тактика следственных действий, Москва, 1997, с. 97.

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materials, making up unclear questions on the run, the person being heard will give the prosecuting officer a very unfavourable evaluation. Such an obvious lack of preparation of the prosecuting officer for the debriefing will make it significantly easier for the person being heard to avoid liability.

"What are the specific tactical tasks that can and need to be solved in the debriefing preparation stage have long been determined by numerous researchers, usually without divergence on the main issues, and, in the light of accumulated practice, these are concretized and new tactics are introduced"⁷.

During debriefings in cases of the migrant smuggling, the prosecution officer must be prepared not only in terms of general culture and knowledge of psychology, but, above all, must have a specific amount of knowledge of migration and asylum law. Some researchers rightly point out that "in cases of investigation of the migrant smuggling, the debriefing of immigrant-witnesses has a conflictual character, because both immigrants and their organizers violate criminal and misdemeanour legislation and will not cooperate with law enforcement agencies"⁸.

We agree that immigrants violate national laws for which they are absolved from criminal responsibility⁹, but our research on the content of their debriefings did not reveal their opposition, on the contrary, they tell in detail about their difficult life, about endless searches for a well-paid job; about searching and finding people who offer to organize their stay or give them the address of a person who can provide accommodation and work; about political pressures in their country; about their precarious situation in terms of religion, etc. Therefore, the prosecuting officer should treat the main witness (the victim) with involvement and conduct the debriefing in the form of a conversation in order to clarify all the details of the crime committed.

For example, in a criminal case, the injured parties stated that "*they are citizens of the Republic of Bangladesh, for a long time, the political situation is very bad, they are in the opposition party called "Bangladesh National Party", for which reason they and their family are persecuted by the ruling authorities of the country. They decided to use the services of a "Broker" (an illegal person who organizes illegal migration to different countries of the world) named Shuman, this person uses several names, they assume that the given name is a fake one. Wanting to get to Hungary, Shuman told them that they could do so for 10,000 US dollars each. They flew by airplane from the city of Dhaka, Bangladesh to the city of Sharjah in the United Arab Emirates. Over about 2-3 days travelled by boat, container ship to Bulgaria. During the entire journey by the ship, he stayed in a room with 10-12 other people from different countries, who were also migrating like them. Arriving in Bulgaria, he was met by another broker, placed in a room for 15 days. After that, he was lied to by the broker and instead of going to Hungary, he ended up in Romania, in the city of Iasi, after which the Romanian police extradited them*

⁷ Питерцев С.К., Степанов А.А. Тактические приемы допроса: Уч. пособие. - СПб., 1994, с. 6-16. (56 с.); Коршунова О.Н., Степанова А.А. и др., Курс криминалистики: В 3 т. Т. 1. Ообщетеоретические вопросы. Криминалистическая техника. Криминалистика. Тактика. Изд-во "Юрид. центр Пресс", 2004, с. 603-606.

⁸ Полежаева С.А., Левченко О.П., Ткач Е.В. Организация и методика раскрытия и расследования преступлений, связанных с незаконной миграцией. Академия управления МВД России - Москва, 2006, с. 185; Бирюков С.Ю. Методика расследования организации нелегальной миграции. Учебное пособие. Волгоград, 2008. С. 85.

⁹ According to Art. 362/1 para. (4) of the Criminal Code, "*The victim of illegal migration shall be absolved from criminal liability for the act of illegal entry, stay, transit through or exit from the territory of the State, as well as for the acts of possession and use of false official documents for the purpose of organizing illegal migration.*"

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*to the authorities of the Republic of Moldova. Later, while in the placement center of the Migration and Asylum Office, they met a person from Uzbekistan named Akmal, who told them that he could help them to reach Romania for the sum of 2000 euro. At the place where they had previously agreed, they were met by the perpetrator and a girl, who got them into a gray car and they drove off in an unknown direction, and at about 19:30 they were detained by police officers"*¹⁰.

In another case, the injured party stated that, "(...) *his and his wife's family have different religious views. After the end of their marriage his wife voluntarily became an atheist, for which reason a conflict arose between their parents. Because of the conflict between the families and in order to find a more decent living in EU countries, they decided to migrate with their family from Iraq (...)*"¹¹.

By intentionally organizing the influence on the personality of the person being heard within the limits of the law, the prosecuting officer has to choose that unique method that will open the soul of the person. One of the main characteristics of the debriefing process is the regularity of its dynamics. It takes place in stages, each stage having its own particularities, which lead to the disclosure of external and internal (psychological) factors. Traditionally, the tactical peculiarities of conducting the debriefing are examined depending on the procedural status of the person being heard in the criminal case: whether he or she is a witness, victim, suspect or defendant.

Our analysis has revealed that judicial practice, depending on the circumstances of the case, attributes to the illegal migrant the status of victim or witness of the crime of organizing illegal migration. We have referred to the attribution of this status in the legal-criminal analysis of the analyzed crime.

Witnesses to the given offense may be employees of the Border Police, employees of the General Inspectorate for Migration, persons who have lent money to the illegal migrant, persons who know about the migrant's entry, transit or stay in the country, persons who witnessed the conversation between the perpetrator and the victim, persons who have temporarily rented accommodation, neighbours of these persons, employees of hotels, employees of the Police, employees of legal entities dealing with job search assistance, employees of travel agencies, employees of the Labour Inspectorate, employees of enterprises, organizations, institutions where the migrants have worked, etc. Witnesses can be persons involved in organizing illegal migration.

Migrants (victims or witnesses) apprehended at the state border crossing points, either illegally crossing the borders outside the border crossing points or detected in hotels, apartments or other temporary accommodation places, must be heard as soon as possible, as they may evade law enforcement bodies or be expelled from the country according to the court decision, because they violated the rules of entry or residence regime on the territory of the Republic of Moldova. At the same time, illegal migrants placed in specialized subdivisions (Temporary Placement Centre for Foreigners) and involved in the migrant smuggling should be urgently interviewed, because as a rule they flee from the premises of these subdivisions and subsequently the prosecuting body cannot establish their whereabouts, which makes the

¹⁰ Judgment of Drochia Court, Riscani district, dated 16.10.2019, issued in Case No. 1 - 189/2019. Available: https://jdr.instante.justice.md/ro/pigd_integration/pdf/4e16064a-d74c-4674-87cd-7cb40bfab0d4 [accessed: 08.04.2024].

¹¹ Judgment of the Hîncești Court, Central Office, dated 21.07.2020, issued in Case no. 1-129/20. Disponibilă: https://jhn.instante.justice.md/ro/pigd_integration/pdf/80651d34-2bd4-4577-a037-74ee750dc98f [accesată: 21.01.2024].

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investigation difficult. Subsequently, it will not be possible to conduct the additional debriefing or other procedural actions (e.g. confrontation) with their participation, therefore, initial debriefings and any prosecution actions with their participation should be conducted as fully as possible, complying with all the requirements of criminal procedural legislation, with the mandatory participation of a translator.

For example, in the case of the migrant smuggling of citizens from Armenia, thanks to their debriefing before the investigating judge, the court of first instance admitted to examine the case in the absence of the injured parties, who at that time were already expelled from the Republic of Moldova¹². Due to the fact that the prosecuting body took all legal measures regarding the debriefing of the illegal migrants, the court admitted their debriefing as evidence of the guilt of the defendants.

The situation at the trial stage is also problematic, as it is often necessary to hear the migrants and it is impossible to establish their whereabouts. Similarly, it is impossible to read out their statements given during the criminal prosecution in the order of Art. 371 para. (1) item 2) CPP.

We recommend to the prosecuting body that in the case of illegal migrants, when the grounds set out in Art. 109 para. (3) CPP, to propose to the prosecutor to submit the appropriate request to the investigating judge for them to be heard. At the very least, the prosecuting body should carry out interviews in order to be able to apply Art. 371 para. (1) point 2) CPP.

For example, in the case of the indictment of TA, GA, BM and BR in that they, during September-October 2017, being members of an organized criminal group, acting with direct intent and in common agreement, having previously divided the roles among themselves, out of material interest, pursuing the purpose of obtaining financial benefit, participated in organizing the illegal entry into the territory of the member countries of the European Union (Germany and France), in particular the Republic of Romania, of Turkish citizens AM, HF and OS, who are neither citizens nor residents of the European Union. During the court debriefing, the statements of witnesses OS on 05.10.2017 and MA on 11.10.2017, respectively, were read out, who were heard by the investigating judge, due to the existence of evidence of their departure abroad (Art. 109 para. (3) CPP)¹³. The witnesses' statements were admitted as evidence of guilt.

In another case, being the grounds provided by Art. 109 para. (3) CPP, in order not to lose the evidence, and for the evidence to be subsequently admitted by the court, the prosecuting body submitted the proposal to the prosecutor to submit the appropriate application for debriefing of five citizens of India - victims (witnesses) of the crime of organizing illegal migration, committed by an organized criminal group. It should be noted that the victims (witnesses) were apprehended at the state border of the Republic of Moldova on 17.11.2023, 22.45, and the debriefing under Art. 109 para. (3) CPP was held before the investigating judge on 27.12.2023¹⁴. It should be noted that according to the judicial practice in the Republic of

¹² Judgment of the Cîmşilă District Court, Central District, dated 27.02.2018 (p. 4), issued in Case No. 1-27/18. Available: https://jcm.instante.justice.md/pigd_integrare/pdf/dbeb8f40-af1b-e811-80d5-0050568b44c1 [accessed: 16.02.2024].

¹³ Judgment of the Hînceşti Court, Central Office, dated 05.06.2018, issued in Case no. 1-5/2018. Disponibilă: https://jhn.instante.justice.md/ro/pigd_integrare/pdf/a42916f4-9269-e811-80d5-0050568b7027 [accesată: 09.05.2024].

¹⁴ Judgment of the Ungheni Court, dated 08.07.2024, issued in Case no. 1-84/2024. Available: https://jun.instante.justice.md/ro/pigd_integrare/pdf/33152dcb-cfbd-40e5-ae6e-387ba92e6de9 [accessed: 10.08.2024].

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Moldova, this term is reasonable. However, we believe that the prosecution body and the prosecutor in such cases should submit the corresponding proposals and, respectively, demarches in more restricted terms, because, as we mentioned in our research, many victims (witnesses) evade the prosecution body, run away from Temporary Placement Centres, etc. For this reason, we come with the proposal to amend and supplement the Criminal Procedure Law so that when there are grounds regulated in art. 109 para. (3) CPP, the respective action should be taken within 3 days from the moment the grounds are established.

During the debriefing of the victims (witnesses) of the migrant smuggling, the prosecuting body, depending on the circumstances of the case, must obtain information on: description of the initial stage of the criminal scheme, countries of destination, transit countries and countries of origin, the route of travel (in detail), the transportation they travelled, the amounts of money granted, the way money was transferred, the way the money was transmitted, the way the documents were perfected, the way invitations or visas were obtained, the purpose of migration, the perpetrators' identity data, the way of communication, telephone numbers, the place of meeting, the place of accommodation, the time of crossing, etc.

We support the position of the authors who consider that "when debriefing migrants who have crossed the state border illegally, the prosecuting authority must establish the following

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- a) which was the reason for illegal entry into the Republic of Moldova;
 - b) when, where and under what circumstances the migrant crossed the state border;
 - c) who organized the illegal entry into the Republic of Moldova and what were their actions, establishing the following circumstances: who procured the travel tickets, who handed them the forged documents or documents, who organized and directly transported them, who ensured their meeting and accompaniment to the point of destination, etc.;
 - d) while the migrant was on the territory of the Republic of Moldova;
 - e) how many times he has visited the Republic of Moldova, and if this has taken place, then it has to be established how he entered and exited the country;

If the migrant has been staying illegally (illegal stay) for a longer period of time on the territory of the Republic of Moldova, he/she is heard on the following issues:

- a) when and for what purpose he entered the country;
- b) on the basis of which the entry was made;
- c) whether or not they have applied to the Migration and Asylum Office;
- d) on the basis of which sources he justifies his existence or activity and whether he is working with someone and what he knows about that person;
- e) entered into any transactions, agreements, contracts and which ones;
- f) who organized the possibility of selling one or another business, etc.

When the migrant has intended for or has transited through the territory of the Republic of Moldova, he/she will be interviewed in order to establish the following circumstances:

- a) which is the country of origin, which countries he/she has transited before arriving in the Republic of Moldova and which is the country of destination, mentioning also the way of transit or stay in one country or another;
- b) what is the purpose of the journey in the country of destination and what are the reasons for not having the necessary documents to transit the Republic of Moldova;

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c) how the migrant crossed the country's border and what was the itinerary of the journey, the type of transportation used and who assisted him/her, etc." .¹⁵

In order to strengthen the evidence of a person's involvement in organizing an illegal entry and if there are discrepancies between the parties' statements, the prosecuting authority carries out confrontation, which in many cases establishes the truth of the case. There are criminal cases in which confrontation accounts for more than 23% of the number of prosecutions, i.e. more than one fifth¹⁶ .

From the analysis of Art. 113 para. (1) CPP, it appears that confrontation is a mandatory action "*in the event of discrepancies between the statements of persons heard in the same case, (...)*". This is apparent from the phrase used by the legislature in the same rule of criminal procedure, namely '*these persons shall be confronted*'. In other words, the choice and the decision to confront them is not a right of the person conducting the prosecution, but an obligation. This seems to us to be a logical provision, otherwise the truth could not be established, discrepancies could not be removed and an objective, complete and all-round investigation would not be considered.

In practice, there are different views on whether a confrontation should be carried out in cases where the suspect or defendant refuses to give a statement. The first position is that it does not make sense to carry out the confrontation because it contravenes Art. 113 para. (1) CPP, since there are no discrepancies between statements once a party (the suspect or the accused) has generally not submitted any statements. The second position is that the confrontation in these cases is carried out, there is no violation of art. 113 para. (1) of the CPC, the law does not prohibit such action and, most importantly, the majority of prosecutors, when there are no grounds for debriefing the victims (witnesses) before the investigating judge (Art. 109 para. (3) CPP), indicate to the prosecuting body to carry out the confrontation in order to ensure the application in court of the provisions of Art. 371 para. (1) point 2) CPP.

Many researchers argue that it does not make sense to hold a confrontation if one of the participants has refused to make a statement, because in this case the confrontation turns into a debriefing of only one person, and it is no longer a confrontation, but another prosecution action, not provided for by the criminal procedure law¹⁷ .

In our view, confrontation can take place in these cases, taking into account the issues outlined above. Moreover, the value of this prosecution action is that the suspect or defendant who refused to make a statement and his defense counsel, in accordance with the investigative practice, ask questions to the witness-immigrant (victim). This allows the prosecuting body, taking into account the additional information obtained during the answers and questions, to properly plan the further investigation of the case and collection of evidence necessary to establish the guilt of the suspect. Secondly, it will provide an opportunity to strengthen the statements of the immigrant (victim) during the confrontation with the suspect or defendant. The victim (witness) will again give statements about the circumstances of the organization of his/her illegal entry and/or illegal stay, in the presence of the person in front of him/her, about

¹⁵ Ostavciuc Dinu, Odagiu Iurie, Metodica cercetării organizării migrației ilegale, Ghid metodic pentru ofițerii se urmărire penale, Colecția juridică a Academiei "Ștefan cel Mare" a Ministry of Internal Affairs of the Republic of Moldova, Cartea Militară Publishing House, Chisinau, 2020, p.43-44.

¹⁶ Judgment of the Comrat Court, Ciadir-Lunga district, dated 30.05.2024, issued in Case no. 1-28/2024. Disponibilă: https://jco.instante.justice.md/pigd_integracion/pdf/675da13f-3005-4011-a080-c8c956216562 [accesată: 06.08.2024].

¹⁷ Желтобрюхов С. Оочная ставка не оправдывает себя как следственное действие // Российская юстиция. 2008. № 1. С. 56.

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whom he/she has previously given statements¹⁸. This gives the prosecuting authority the possibility to establish to the best of its belief the veracity of the statements, the reaction of the suspect or defendant and that the victim (witness) is talking about the person standing in front of him/her and about another person. At the same time, in some cases, the suspected or accused person may be able to confirm or deny certain statements of the victim (witness) during the debriefing, even if he or she refused to give statements.

For example, in a criminal case¹⁹, in which the criminal prosecution was initiated on the fact of organizing illegal migration by an organized criminal group, on 07.05.2020 the confrontation between the injured party HO and the accused SZ was conducted. During the confrontation, the victim fully supported the statements initially submitted on the case, and the defendant partially confirmed the statements communicated by HO. The court admitted the respective action as evidence in the guilt.

The analysis of the criminal files shows that the results of the confrontation is positive. For example, having conducted the confrontation on 15.07.2016, in a case of organizing illegal migration, between the defendant AR and the witness VV, it was established what were the stages of criminal activity and the role of the defendants BB and AR, as well as the suspect NN, it was found that the witness did not pay anything to BB for his services, the money was transferred to AR, who, as the organizer of the organized criminal group, paid BB money in the form of salary²⁰. In another confrontation conducted on 17.10.2016, it was found that XXX in particular asked him to cross foreign persons across the Dniester River into Ukraine in exchange for money²¹.

Conclusions. The tactical-correct conduct of debriefings in cases investigating the organization of irregular migration is a crucial step in ensuring justice and deterring criminal activities that exploit human vulnerabilities, as well as in uncovering the crime.

The debriefing, in the case of investigation of the migrant smuggling, is the main procedure of proving the guilt of the perpetrator and establishing the evidence, therefore the success of its conduct greatly influences the outcome of the investigation and the establishment of the truth in the case.

We recommend to the prosecuting body that in the case of illegal migrants, when the grounds set out in Art. 109 para. (3) CPP, to propose to the prosecutor to submit the appropriate request to the investigating judge for them to be heard. At the very least, the prosecuting body should carry out interviews in order to be able to apply Art. 371 para. (1) point 2) CPP.

From the analysis of Art. 113 para. (1) CPP, it appears that confrontation is a mandatory action "*in case of discrepancies between the statements of persons heard in the same case, (...)*". This is apparent from the phrase used by the legislature in the same rule of criminal

¹⁸ For example, the judgment of the Chisinau Court, Riscani District Court, dated 26.06.2018, issued in Case no. 1-118/2017. Available: https://jc.instante.justice.md/ro/pigd_integration/pdf/8a6ae257-177a-e811-80d4-0050568b021b [accessed: 14.11.2023]. The court admitted as evidence the confrontation conducted between the defendant BM and the witness VȘ, in which the latter supported his statements.

¹⁹ Judgment of the Hîncești Court, Central Office, dated 21.07.2020, issued in Case no. 1-129/20. Disponibilă: https://jhn.instante.justice.md/ro/pigd_integration/pdf/80651d34-2bd4-4577-a037-74ee750dc98f [accesată: 21.01.2024].

²⁰ Judgment of Chisinau District Court, Central Office, dated 23.06.2017, issued in Case No. 1-272/17. Disponibilă: https://jc.instante.justice.md/ro/pigd_integration/pdf/3eb532dc-0758-e711-80d3-0050568b4c47 [accesată: 02.11.2023].

²¹ Judgment of the Soroca District Court, Central Office, dated 21.09.2017, issued in Case no. 1-395/16. Available: https://jsr.instante.justice.md/ro/pigd_integration/pdf/5a021b1e-cc9e-e711-80d6-0050568b4d5b [accessed: 16.11.2023].

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procedure, namely '*these persons shall be confronted*'. In other words, the choice and the decision to confront them is not a right of the person conducting the prosecution, but an obligation. This seems to us to be a logical provision, otherwise, the truth could not be established, discrepancies could not be removed and an objective, complete and all-round investigation would not be considered.

We consider that if the suspect (defendant) does not agree to give statements, the confrontation can take place between him/her and another participant who has given statements (e.g. witness). The value of this prosecution is that the suspect or defendant who has refused to make a statement and his or her defense counsel, in accordance with the investigative practice, question the witness-immigrant (victim). This allows the prosecuting body, taking into account the additional information obtained during the answers and questions, to properly plan the further investigation of the case and collection of evidence necessary to establish the guilt of the suspect. Secondly, it will provide an opportunity to reinforce the statements of the immigrant (victim) during the confrontation with the suspect or defendant. The victim (witness) will again give statements about the circumstances of the organization of his/her illegal entry and/or illegal stay in the presence of the person in front of him/her, about whom he/she has previously given statements. This enables the prosecuting authority to establish, under its own belief, the veracity of the statements, the reaction of the suspected or accused person and that the victim (witness) is talking about the person standing in front of him/her and not about another person. At the same time, in some cases the suspected or accused person may confirm or deny certain statements made by the victim (witness) during the debriefing, even if he or she refused to give evidence.

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