

Peculiarities in Crime Scene Identification of Actors and Confrontation of Statements during Migrant Smuggling Investigations

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Abstract

This article discusses the particularities of identifying the actors and confronting statements at the crime scene in the context of investigations of migrant smuggling, examining these procedures from the forensic science perspective. The study emphasizes both theoretical and practical aspects, providing case studies from court law practice to illustrate the applicability of the tactics discussed.

The main objective of the research was to identify and evaluate forensic tactics that can contribute to an objective and thorough investigation of the circumstances of a migrant smuggling offence, while strengthening the evidentiary basis of the criminal process. The recommendations made as a result of this research are not only intended to support the work of the prosecution but also to provide essential support in the fight against organized crime.

This research is distinguished by the combination of doctrinal theory and practical analysis, thus contributing to the development of effective investigative methods that ensure both legality and success in detecting and combating crimes related to the organization of illegal migration.

Keywords: identification, confrontation, statements, crime scene, procedural action, forensic tactics.

Introduction. The tactics of identifying the criminals and confronting statements at the crime scene are particularly important procedural actions in forensic science and criminal procedure. These methods are essential for the clarification and corroboration of evidence in a criminal investigation, providing a solid basis for establishing the judicial truth. In the case of investigating the organization of illegal migration, these actions become all the more relevant, given the complexity and transnational nature of this criminal phenomenon.

Presenting a person for recognition allows the identification and confirmation of the involvement of individuals in criminal activities, with a direct impact on establishing criminal responsibility. In cases of migrant smuggling, where criminal networks are often well organized and involve a large number of participants, the recognition of individuals becomes a crucial step in dismantling these networks and bringing the perpetrators to justice.

Confronting statements at the crime scene is another essential procedural action, whereby statements made by suspects, witnesses or victims are confronted with the physical reality of the crime scene. This tactic helps to verify the veracity of statements and to identify possible discrepancies or inconsistencies, which can be decisive in clarifying the circumstances of a complex crime such as the organization of illegal migration.

In the context of migrant smuggling, where criminals may try to manipulate the facts or conceal essential details, these actions become essential tools for the prosecution. They not only help to confirm statements and identify the persons involved, but also to build a solid criminal case that will stand the test of legality in court.

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Thus, the importance of these tactics cannot be underestimated in investigating the organization of illegal migration, as they facilitate an efficient and fair justice process and contribute significantly to deterring and combating this type of crime.

Applied methods and materials. In the elaboration of this publication, theoretical, normative and empirical materials were used. It was also possible to approach the subject by applying various methods of scientific research, specific to forensic theory and doctrine, such as the logical method, deduction and induction, comparative analysis, and systemic analysis, among others. The theoretical and legal basis of the article is constituted by the normative regulations in the field of criminal procedure and forensics, with reference to the procedures of presentation for recognition and confrontation of statements at the crime scene.

Results and discussions. In judicial practice, it is observed that presentation for recognizance is a procedural and tactical forensic action that is widely carried out practically in all cases when it is necessary to recognize the perpetrators or other persons who have an interest in the case. For example, in a criminal case¹, the presentation of the person for recognizance constituted 31.8% of the volume of procedural actions performed. It should be noted that our analysis shows that in the case of investigation of the organization of illegal migration, the person's presentation for recognition is carried out only after the photo pursuant to Art. 116 para. (6) CPP.

"If the injured party or the witnesses do not have exact data about the suspect (defendant) or they may be wrong, then the presentation for recognizance is required to be carried out in any case"². "Those suspects (accused), who are known to the aggrieved party and witnesses, not only by their names and nicknames but who know their identity (for example, if the minor was trafficked by a friend, relative, neighbour, acquaintance, etc.) shall not be presented for recognition"³.

This action "is the only criminal prosecution action, the basic essence of which is identification"⁴, and which gives the prosecution body positive results in identifying a larger number of participants involved in organizing illegal migration, even if they are not citizens of the Republic of Moldova and are not on its territory, and their actions are committed only on the territory of the state of which they are residents.

"On 15.04.2022, it was proposed to make the presentation for recognition. Thus, during this action, the victim (witness) AM was shown 6 photographs of men of approximately 30-35 years of age, in which he recognized the one driving a white BMW. He recently learned from Hennadii that the driver's name was Denis. As mentioned earlier, this man was in the town of Arciz at a cafe and drove Hennadii and TM to the town of Bolgrad. He recognized this man by the shape of his face, i.e. oval, small eyes, small nose and short hair"⁵.

Positive results and practically of particular importance for the prosecution body, according to which it was possible to identify a member of the organized criminal group, his detention, the

¹ Judgment of the Hîncești Court, Central office, dated 17.01.2024, issued in Case no.1- 297/2022. Disponibilă: https://jhn.instante.justice.md/ro/pigd_integration/pdf/95b49155-78f0-4b07-970d-46241b5e17bb [accesată: 11.08.2024].

² Баев О., Солодов Д., Производство следственных действий: криминалистический анализ УПК РФ, практика, рекомендации, 2-е изд., Москва, 2010, с. 236.

³ Ostavciuc Dinu, Aspecte procesual-penale și tactici criminalistice privind cercetarea traficului de copii, Editura Pro Universitaria, Bucharest, 2023, p. 194-195.

⁴ Степанов В. В., Научные и правовые основы предъявления для опознания при расследовании преступлений / Степанов В. В., Михайлова Ю. Н., Саратов, 2003, с. 29.

⁵ Judgment of the Cahul Court, Central Office, dated 11.10.2022, issued in Case no. 1-327/2022. Available: https://jch.instante.justice.md/ro/pigd_integration/pdf/34e3cc54-5b66-4e80-a615-b5b6f892e7c4 [accessed: 06.08.2024].

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planning and carrying out of further procedural actions, as well as special investigative measures, is the case when "*by the minutes of presentation for recognition of the person of 12.02.2020, the injured party HQ, indicated that he recognizes the person in photo no. 6 as the person they initially met in the local "Andy's Pizza", located on bd. Dacia, 28, mun. Chisinau, after which they were transported by his car to the Romanian border. According to the photographs annexed to the minutes, it was established that in photo no. 6 is the defendant SZ*"⁶, about whom the prosecuting body, at that time, had no evidence, but only some assumptions.

In another case, the court admitted as evidence of guilt "*The protocol of recognition of the person after the photograph of 12.02.2024, according to which the injured party HO recognized the defendant IO, as the person named Oleg*"⁷.

Presenting the person for recognition is not only carried out for the purpose of identifying the persons who committed the organization of illegal migration, but also to clarify circumstances important for the investigation of the case (e.g. identification of witnesses, victims of the crime, establishing the roles of each member of the organized criminal group, etc.).

For example, MM was found guilty of the fact that, "*during the months of August - September 2012, acting jointly and in agreement with BG, pursuing the aim of directly obtaining a financial benefit, knowing that the Cts. XXX, CCC, VVV and BBB, intending to go to work in Italy, without having documents for entry, transit, stay as well as exit from Ukraine, Slovakia and other countries, including Italy, being neither citizens or residents of these states, intentionally, carried out actions of organizing illegal migration of the latter to Italy, manifested by providing his car, personal transportation with his car, facilitating illegal crossing of the state border of the R. Moldova, as well as the organization of illegal entry, illegal transit of the territory of Ukraine, Slovakia and illegal exit from the territory of these states, being neither citizens nor residents of these states, for which he received 38 180 lei*"⁸. The witness was shown a photograph of the photo of Cet. VVVV, BBB stated that "*these persons were passengers*". On being shown the photograph of CCC, he stated that "*he does not remember if he was in the car, but he knows him from Milan, he has seen him a few times*".

Therefore, this procedural action is applicable and useful in cases investigating the organization of illegal migration.

"The law does not provide that, after a person has been presented for recognition, a confrontation between the identifier and the person identified must necessarily take place. Judicial practice shows that this is a loophole in criminal procedural law, because there are cases where, after a period of time after the identification, the identifier states that he was in an emotional state and doubts that the identified person committed the actions he spoke about. From the author's point of view, after presentation for recognition, confrontation is desirable, especially in cases in this category, when the result of the identification can be reconfirmed by confrontation. During the confrontation, the immigrant-witness has the opportunity, being next to the person who organized

⁶ 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].

⁷ https://jhn.instante.justice.md/ro/pigd_integration/pdf/dd8070aa-5ca4-45c0-90df-2983ddc96251

⁸ Judgment of the Chisinau Court, Buiucani district, dated November 18, 2019, issued in Case No. 1-1731/19. Available: https://jc.instante.justice.md/ro/pigd_integration/pdf/99b7301e-3f57-47da-9ed1-c5fad79816aa [accessed: 05.06.2024].

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his entry and/or stay, to confirm previous statements and, at the same time, the prosecuting officer obtains additional evidence of the guilt of that person"⁹.

We fully support this position, adding that if the prosecuting body, once it has identified the person recognized by the victim (witness), will proceed to the hearing and confrontation, then the results will be positive and effective, because the memory of the recognizer is fresh and untainted, and the investigations will be done by saving time, will be operative, administering undeniable evidence. For example, in one case, when the witness was presented with the photograph of CA and MMM, he communicated that "*he does not know such persons, more precisely he does not remember, because it has been a long period of years*"¹⁰. In this case, if the prosecuting body was acting operatively and was about to proceed with interviews and confrontations, we presume that the results of the presentation for recognition were different.

"It should be noted that victims of organized crime are afraid and their psychological state is generally very low, especially when the victims are minors, therefore it is recommended that the presentation for recognition be made by means of televised transmission of the image"¹¹. This recommendation is also viable for investigating the organization of illegal migration, especially when committed by an organized criminal group. At the same time, it is advisable that when the special investigative measure - intelligence gathering - has previously been carried out by means of photo booths and other methods that offer the possibility of identifying a person with a higher probability, the presentation for recognition should be carried out, in particular live.

Confrontation of statements at the crime scene. According to Art. 114 para. (1)-(3) CPP, "*In order to verify or clarify the statements of the witness, victim, injured party, suspect, accused about the events of the crime committed in a specific place, the representative of the prosecuting body is entitled to go to the crime scene together with the person being heard and, if necessary, with the defense counsel, interpreter, specialist, legal representative and to propose to the person being heard to describe the circumstances and objects about which he/she has made or may now make statements. The person being heard shall point the way to the place where the crime was committed, describe the circumstances and objects about which he/she has previously made statements and answer the questions of the representative of the prosecuting body. If, during the examination of statements at the crime scene, objects and documents that may serve as evidence in the criminal case are discovered, they shall be taken away and this fact shall be recorded in the minutes.*

The confrontation of statements at the crime scene appears to be the prosecution and forensic tactic used in about 18% of the cases we analyzed. In the cases where this action was carried out, the prosecutor was able to analyze and verify the veracity of the statements given by the parties to the proceedings, whether the place or the route indicated by the participant in the criminal proceedings is the place of the crime, whether the area or the border sign indicated by the victim (witness) is really the place of illegal crossing of the state border, etc.

For example, in a case of organization of illegal migration, the prosecuting body carried out the confrontation of the statements of victims (witnesses) at the place of commission of the crime.

⁹ Сухарникова А.В., Методика расследования преступлений, совершаемых в сфере организационной миграции неорганизованной миграции, Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2010, с. 192.

¹⁰ Judgment of the Chisinau Court, Buiucani district, dated November 18, 2019, issued in Case No. 1-1731/19. Available: https://jc.instante.justice.md/ro/pigd_integratiun/pdf/99b7301e-3f57-47da-9ed1-c5fad79816aa [accessed: 05.06.2024].

¹¹ Ostavciuc Dinu, Odagiu Iurie, Investigation of organized crime offences, Methodical guide for criminal prosecution officers, Legal Collection of the "Stefan cel Mare" Academy of the Ministry of Internal Affairs of the Republic of Moldova, Cartea Militară Publishing House, Chisinau, 2020, p. 71.

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In this regard, the victims (witnesses) indicated the place where they met the defendants, and who, the place from where they were picked up, i.e. the place of their temporary shelter (the hotel "Maxim Pasha", located in mun. Chisinau), the model of the car (Mercedess), the route traveled and the point of destination (Leova-Leușeni route at the intersection with the road leading from the village of Tochile-Răducani, Leova rayon to the village of Tomai, Leova rayon), the place where the victims were handed over to another member of the criminal group, the distance traveled (2 km) and the route traveled to an abandoned building near the border sign 1175 in the direction of the village Tochile-Răducani, where they were picked up by two other members of the criminal group, the route traveled to the bank of the Prut River in the region of the border sign 1175 in the direction of the village Tochile-Răducani (MD) - village Broscoștești (RO), where the boat previously brought¹² was located.

In another case of the organization of illegal migration by an organized criminal group, created by citizens of different countries, implicitly of the Republic of Moldova, "*previously sharing roles, acting with direct intention, determining criminal activities at cross-border level and aiming to obtain financial or material benefit from the organization of illegal migration of Indian citizens to the European Union Area, created a well-organized criminal scheme, according to which, using the Republic of Moldova as a transit zone, they organized the transportation, entry and stay of Indian citizens in States where they are neither citizens nor residents, in exchange for financial remuneration. As a result of carrying out the aforesaid criminal actions, the group formed, in the period of 2023 received in India as an advance from the victims citizens of India DG amount of 8800 Euro, from DR amount of 11000 Euro, from SK amount of 5000 Euro, from SP amount of 8800 Euro and from RK amount of 7600 Euro, for which they organized their illegal migration to the European Union Area including through the Republic of Moldova. Further, on November 17, 2023, at approximately 20:00, the defendant ȘV, together with ȘG, being in criminal connection with other members of the organized criminal group, with the means of transport of the latter transported from mun. Chisinau to the citizens of India in mun. Ungheni, near the border, where the latter transferred to the former upon additional request the amount of 60 (sixty) US dollars and were going to illegally cross the border from the Republic of Moldova into Romania, after which in Romania they were to be picked up by other persons and their identity documents, which were taken when they left mun. Chișinău, but following the prompt actions of the border police, on November 17, 2023 at 22:45, they were detained in the perimeter of the border sign 1079 upstream 50 m from mun. Ungheni*"¹³. Being carried out on 23.11.2023 the confrontation of statements at the crime scene, the victims (witnesses) indicated the place where they got out of the car in which they traveled on 17.11.2023 from the Chisinau municipality after which indicated the direction and route they traveled to the Romanian border. At the same time, the prosecutor and the court considered the statements of the victims (witnesses) as truthful and admitted as evidence of guilt, because all 5 victims (witnesses) indicated the same thing, i.e. there were no discrepancies in their statements made separately in this case and, at the same time, their statements corroborated with the other evidence administered.

If during this procedural action, documents or objects relevant to the organization of illegal migration are found, either to prove statements, circumstances, or to prove the place where the

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

¹³ Judgment of the Ungheni Court, dated 08.07.2024, issued in Case no. 1-84/2024. Available: https://jun.instante.justice.md/ro/pigd_integratiune/pdf/33152dcb-cfbd-40e5-ae6e-387ba92e6de9 [accessed: 10.08.2024].

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victims (witnesses) of illegal migration were temporarily accommodated or to discover objects and documents previously hidden in order to conceal the crime, etc., the prosecutor will take them away, indicating them in the report on the confrontation of statements at the crime scene, without drawing up a warrant and another report on their removal.

For example, in a criminal case, following the confrontation of statements at the crime scene on 24.02.2020, the victim (witness) HQ confirmed that he lived in the house in XXX village, YYY city, where he and his family members and the unidentified person named Ibrahim were sheltered by PV. During the confrontation of the statements on the spot, in the house where the defendant PV lived, and where the victims were initially sheltered, a bag with goods and clothes belonging to HO and his family members was found¹⁴.

In other cases, the respective procedural action is carried out not only for the purpose of confronting the statements of the parties at the crime scene, i.e. place of temporary accommodation, place of crossing the state border, etc., but also for the purpose of confronting circumstances that are of importance for the criminal case (for example, for confrontation of the place of meeting of the victim (witness) and the perpetrator within the country in order to receive further directions). For example, in one case, being carried out the confrontation of statements on the spot on 12.02.2020, the injured party HQ, indicated to the route of traveling, from where they were picked up by a taxi from Ismail St. by ET and another unidentified person, after which together they left to the local "Andy's Pizza", located on bd. Dacia, 28, mun. Chişinău, and later with SZ's car, including to the gas station "Lukoil" located on bd. Dacia, 87, mun. Chisinau¹⁵. As a result of this procedural and forensic tactical action, the prosecutor found out that the persons knew each other, had been together and had talked. Then, based on the obtained data, the prosecutor planned the subsequent procedural actions and special investigative measures, taking video frequencies, identifying the member of the criminal group, the model of the car and the identity of the taxi driver, etc.

In the practice of other countries, "there are cases where a large number of illegal migrants are apprehended, and the question arises how to carry out on-the-spot confrontation of statements with such a large number. We are aware that on-the-spot confrontation of statements on the spot of several persons simultaneously is not allowed"¹⁶. "In this case, the proposal to carry out a mediated confrontation of on-the-spot statements deserves attention. It is proposed to carry out this confrontation by: the use of topographical maps; photographs, film footage, video recordings; computer modeling"¹⁷.

The literature discusses whether confrontation of statements at the crime scene necessarily involves a direct visit to the crime scene. "For example, any hearings of witnesses - immigrants start with questions on how and where they crossed the border, what route they followed in the country to the place where their stay was organized or to the place of their apprehension, etc. It is reasonable to clarify the route on topographical maps and to fix it in the minutes of the confrontation of statements on the spot. It is necessary for the immigrant witness to note his

¹⁴ Judgment of the Hînceşti 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].

¹⁵ Judgment of the Hînceşti 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].

¹⁶ Сухарникова А.В., Методика расследования преступлений, совершаемых в сфере организации незаконной миграции, Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2010, с. 190-191.

¹⁷ Власенко Н., Степанов В. Тактика проверки показаний на месте // Законность. 2008. № 1. с. 22-23.

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explanations with the help of symbols on the map, which will be signed by him, witnesses, translator, prosecuting officer and other persons involved in the respective procedural action. The map will be annexed to the minutes. This confrontation of statements is particularly relevant when immigrants are transported in hideouts of different types. It is invaluable to verify the statements of the immigrant witness on the basis of the photo and video recordings made during the investigation of the crime scene. This provides an additional opportunity for the prosecuting officer to clarify in detail the context of the crime committed and to establish the circumstances relevant to the case"¹⁸.

In other words, the respective scholars consider that the law does not directly indicate the necessity of a physical visit to the crime scene. According to the national criminal procedural legislation, the exit or visit to the crime scene is obligatory, as Art. 114 para. (1) CPP imposes this by using the phrase "(...) *the representative of the prosecuting body is entitled to go to the crime scene together with the person being heard (...)*". Therefore, the presence at the crime scene is obligatory, both for the participants in the proceedings and for the prosecuting authority.

Conclusions. From the analysis of the doctrine and judicial practice regarding the carrying out of the presentation for recognition and confrontation of statements at the crime scene we come to the conclusion that these procedural and forensic tactical actions are used, when the grounds and circumstances of the case require it, for the effective investigation of the organization of illegal migration.

We note that presentation for recognizance is the only criminal procedural action and forensic tactic is the only action of identification of persons and objects.

We recommend the prosecuting body to present the person and the objects for recognition. However, the investigation revealed circumstances where the prosecuting authority could and should have done so, but limited itself only to the photo identification.

We recommend to the prosecuting body that in the case of confrontation of statements at the crime scene, as well as during the hearing, to use the presentation of photographs of the scene of the person making the statement, geographical maps, other important documents in order to streamline the respective procedural actions. This will strengthen the evidence and may also establish and uncover other data or circumstances of the crime.

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¹⁸ Сухарникова А.В., Методика расследования преступлений, совершаемых в сфере организации нелегальной миграции, Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2010, с. 191.

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