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Some Aspects Regarding the Tactics of Hearing Witnesses

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ABSTRACT: In this paper, we have analyzed aspects related to the tactical activity of hearing witnesses, more precisely, what their statement represents, its importance in the conduct of criminal proceedings, and how listening to the various categories of witnesses. Also presented are the activities that take place in the preparation phase of the hearing of witnesses, the tactical conduct in the stage of identifying witnesses, and the free reporting of the witness.

KEYWORDS: witness, hearing, tactical conduct, judicial body, tactical methods

Introduction

As a means of proof, the testimony of witnesses has been known since ancient times and may be considered the first means of evidence used in judicial probation because, in those times, those who were literate were few. For this reason, naturally, the main means of proof admitted, as a rule, when the parties could not obtain written evidence were witnesses.

The reports made by the witnesses to the criminal investigation or trial bodies have received different names: testimonies, testimonial evidence, witness testimony, witness statements etc. (Mărgărit 2017, 2619).

The process of forming witness statements involves a moment of acquiring the information limited to the crime or its perpetrator, when the witness through the media perceives circumstances related to the act, a moment of preserving in memory the information perceived and a moment of communication these details to the judicial bodies by way of reproduction or recognition (Măgureanu 2004, 193).

Testimony or testimonial evidence, as is well known, is one of the oldest means of probation and among the most used in the judicial process, in general and the criminal process in particular. Listening, as a witness, to the person who has knowledge about a certain fact or circumstance, in connection with the criminal case, respectively the information obtained through testimony is likely to serve to find out the truth (Mărgărit 2017, 2620).

The hearing of witnesses requires prior training in both simple and complex cases. This training helps the criminal investigation body that carries out the hearing to obtain a more valuable statement (Grofu 2019, 77).

Activities carried out in the preparation phase of the hearing of witnesses

In the preparation phase of the witness hearing, the following activities are usually performed:

a) Studying the case file

The study of the materials in the file is the first activity performed by the judicial body and has a significant role in achieving the objectives proposed by the hearing (Ionescu 2009, 12).

By examining the documents existing in the case file up to that point, it can be established: the nature of the act committed, the persons from among whom witnesses can be chosen, the conditions under which the act was committed, the possibilities of perception of the persons to be heard as witnesses, operating system used by the offender, the conditions necessary for the

conduct of the hearing, taking into account the age, health, education of the person heard, as well as his psychological profile.

b) The knowledge of the person to be heard is made before the meeting with him, but also at the time of the meeting. Before the meeting with the witness, the criminal investigation body, through investigations and records, establishes the identification data, the moral profile, the degree of kinship with the perpetrator, the training, the state of health of the witness (Grofu 2019, 78-79).

The witness is also evaluated in terms of the relationships and interests he has in question, corroborated with his emotional dispositions, due to the circumstances related to the case, which may determine bias or a certain insincerity reflected in statements (Pletea 2003, 171).

c) Preparation of the hearing plan

The plan of hearing the witness is drawn up by the criminal investigation body that is to carry out the hearing. Usually, such a plan is drawn up in complex, important, more difficult cases, but even in simple cases, by resorting to such plans, an incomplete hearing is avoided and implicitly the recall of the witness to hearings.

d) Establishing and arranging the place of the hearing

The place of hearing is, as a rule, the seat of the criminal investigation body. As the case may be, the witness can also be heard at his home, at work, at the crime scene, at the place of detention, in the case of detainees (Grofu 2019, 79-80).

If there are several witnesses, the choice of those to be heard will be made taking into account the quality of the data they have, their personality, objectivity and position on the case under investigation (Buzatu 2013, 120).

Tactical conduct in the witness identification stage

The stage of identifying the witness, which includes the taking of the oath, consists in his question about name, surname, nickname, date and place of birth, personal numerical code, name and surname of parents, citizenship, marital status, military status, education, profession or the occupation, place of work, domicile and address to which he wishes to be informed of the procedural documents, criminal record or if a criminal trial is against him, if he requests an interpreter if he does not speak or understand the Romanian language or not can express himself, as well as on any other data to establish his personal situation.

From this first stage, the judiciary is obliged to follow a few tactical rules, specific to the beginning of the hearing, necessary to create a psychological climate suitable for obtaining complete and sincere statements:

a) Receiving the witness in a correct, civilized manner, which must be present from the moment of waiting until the moment of the actual hearing;

b) Creating a sober listening environment, characterized by seriousness, free of stressors, which can distract the witness, such as, for example, the presence of strangers, objects, devices or installations that may arouse curiosity or fear;

c) The behavior of the judicial body in a calm, encouraging way, to reduce the tension, the natural anxiety of the witness. The attitude of coldness, defiance, arrogance is totally contraindicated, which can lead to inhibition of the witness or even to his determination to avoid complete statements, especially if he is sudden (Stancu 2015, 424-425).

Tactical conduct from the moment the witness is freely reported

At this stage of the free report, the witness will be informed of the subject matter of the case and will be shown the facts or circumstances for which he was proposed as a witness, being asked to state everything he knows about it (Buzatu 2013, 121).

Free or spontaneous reporting begins by asking a general question or general request that gives witnesses the opportunity to state everything they know about the facts or circumstances for which they have been asked to clarify.

There are numerous situations in which the witnesses in their free report highlight aspects hitherto unknown to the investigating body, important for the case, or elements likely to show other deeds committed by the defendants in the case in which they are heard. During the free report, the investigator has the opportunity to know the witness in the way he exposes what is perceived, the certainty with which he presents the facts and circumstances, hesitations, errors, returns on some aspects of the statements made, as well as the robustness of the arguments presented (Olteanu and Ruiu 2015, 228).

As in the case of the defendant, it is advisable that the witness be interrupted only when a departure from the subject is observed. Through the free report there is the possibility for the witness to reveal new aspects, unknown to the investigator and which may have escaped the witness in a first phase.

Recalling the events during the discussion, he reminds them, hence the emergence of new issues. New data will have to be considered with caution and verified with the help of existing ones (Ionescu 2007, 185). It is strictly forbidden to use violence, threats or other means of coercion, as well as promises or exhortations, in order to obtain evidence (Buzatu 2013, 122).

Tactical rules applied in the question formulation stage

This stage is not, at least in theory, mandatory. Whenever the free report has not fully clarified the facts and circumstances about which the witness was called to testify, the hearing will continue with questions regarding omitted, forgotten, hesitations or contradictions (Buzatu 2013, 122) .

However, the judicial body is required to intervene with questions that may clarify the witness's accounts or verify them. This stage is also called *Witness Interrogation, Guided Reporting, Deposition-Interrogation* (Botez 2016, 204-205).

From the perspective of forensic tactics, the questions asked by the judiciary are divided into several categories:

- Supplementary questions, addressed in the event that the witness omitted certain aspects;
- Clarification questions, addressed on issues that were not clearly reported;
- Support questions, addressed in order to remove distortions such as substitutions or transformations;
- Control questions that allow the verification of statements in terms of accuracy and veracity.

In formulating and asking questions it is necessary to observe the following rules:

- The questions must be clear, precise and concise;
- The questions will strictly address the facts perceived by the witness;
- The questions will not contain intimidating elements;
- The way in which the questions are formed and the tone in which they are addressed should in no way suggest the answer.

The specific tactical rules for listening to the answers are essentially the following:

- Listening to the witness with all the attention and seriousness, avoiding the boredom, annoyance, expressions or gestures of approval or disapproval that may confuse the witness;
- When notifying any contradictions in the witness's answers, the judicial body must not react immediately, to express its surprise or dissatisfaction, but to register it for its subsequent qualification;
- Following carefully, but without ostentation, the way in which the witness reacts to questions, or if there are indications of possible insincerity (Buzatu 2013, 122-123).

If it is found that the witness tries to lie, related to the particularities of each case, the tactical procedures are different, some approaching those specific to the tactics of listening to the suspect, of course without exceeding the legal framework.

In these circumstances, the hearing will be repeated; questions will be reformulated and diversified, including confrontation with other witnesses or perpetrators, insisting on details that cannot be taken into account by those who "prepare" statement by agreement with the parties or other witnesses (Stancu 2015, 429).

If a witness finds it difficult to remember some data, he may recall it with reference questions without being suggested the answer.

The active role of the judiciary is manifested when it becomes necessary to complete, clarify or verify certain statements, especially if they are contradictory and insincere (Ciobanu and Stancu 2017, 114).

Tactical features applied in listening to minor witnesses and other categories of witnesses

Listening to minor witnesses

According to the provisions of article 124 of the Criminal Procedure Code, the hearing of a minor witness up to 14 years of age takes place in the presence of one of the parents, guardian or person or representative of the institution to which the minor is entrusted for upbringing and education it is considered necessary, upon request or ex officio, the criminal investigation body or the court to order a psychologist to attend the hearing of the minor witness.

In accordance with the provisions of article 124, paragraph (5) of the Criminal Procedure Code the minor witness who, at the time of the hearing, has not reached the age of 14 is not required to give statements in accordance with reality and the fact that the law punishes the crime of perjury, but is drawn to the truth.

From a forensic point of view, listening to the minor is particularized according to his age it is becoming more and more distant from listening to the adult, as the age is younger. Thus, unlike listening to a 16-year-old minor, who does not differ too much from listening to an adult, listening to a 6-year-old child is governed by different tactical rules.

Listening to a 6-year-old child must be done by a specialist in child psychology, in a place that is familiar to him, because only in this way is it possible to establish a psychological contract with him (Ciobanu and Stancu 2017, 116-117).

The psychic peculiarities that influence the relativity of the statements of minors and young children depend on age. In this regard, children can be conventionally divided into several age groups: pre-schoolers, elementary school age, and middle school age. Hearing middle-aged adolescents in high school differs little from hearing mature witnesses and defendants (Golunski 1961, 346).

Listening to the minor witness goes through the same main stages: preparation for the hearing, identification of the person, the actual listening, respectively, the free reality, followed by questions and answers (Ciobanu and Stancu 2017, 117).

Throughout the literature, forensics or forensic psychology, it is rightly emphasized that the veracity of the statements of a minor witness in good faith, as well as the assessment of their probative force cannot be conceived without knowing the psychological mechanisms underlying the formation of testimony (Suciu 1963, 577).

Listening to the elderly

Specialists say that after the age of 65 the aging process occurs, which intensifies after 70-75 years. In their case, there is a decrease in sensory reception and the appearance of depersonalization syndrome, accompanied by hysteria, frustration, selfishness, irascibility, desire for revenge, etc.

From a tactical point of view, listening to the elderly is close to that of minors but has a more complex character (Buzatu 2013, 125).

The statements must be well verified and critically interpreted, in the hypothesis of the existence of some small interests in question, which can be marked by the desire for revenge, resentment, even unjustified malice (Ciobanu and Stancu 2017,124).

Listening to people with disabilities

Listening to the deaf-mute is related to the level of mental development and intellectual training, some of these disabled, with all the difficulties of auditory perception and expression, being able to communicate without the help of interpreters, due to the training performed in specialized schools. As a result, the investigator has a duty to inquire in advance about these circumstances.

The actual listening is characterized by the fact that the free realization of the deaf-mute witness is much more difficult, the weight being held by the questions, very precise and clearly expressed. It goes without saying that the vote is aimed at the aspects that the witness perceived visually, although he can understand, and even very well, the content of a discussion after the movement of the lips. It is advisable to listen calmly and patiently, especially since deaf-mute people are often suspicious and irascible. The magistrate must be careful if the nervousness is natural or if it does not represent an attempt to simulate the deaf-mute, or a reaction to an inappropriate behavior to the disabled state (Stancu 2015, 435).

With regard to ***blind witnesses,*** it is important to remember that they have a very developed sense of touch and a very high, special auditory acuity, which allows them to perceive sounds much better, to recognize people by voice and to realize what it happens around them, after the noises produced.

Therefore, the testimony of the blind can be taken without reservations, some aspects or episodes of a deed being able to receive them even better than a seer (Stancu 2015, 435).

Listening to people who do not know the Romanian language

People who do not know the Romanian language will be heard in the presence of an interpreter (Buzatu 2013, 125). A foreigner who does not know the Romanian language can be asked about the facts he witnessed, as well as about the facts he heard and had the opportunity to understand (Stancu 2017, 435).

From a tactical point of view, the area of origin, the degree of training, the particularities of the judicial system in the country of origin must be taken into account (Buzatu 2013, 125) even if it is without incidence with the case, but without any deviation from the rules or the principles of the Romanian criminal process (Ciobanu and Stancu 2017, 125).

Listening to people with mental disabilities

Listening to the disabled who present various psycho-pathological disorders takes place only if it is considered absolutely necessary, being prepared and performed with great caution, with the help of a specialist. The hearing is conducted in a setting free of stressors, by moving the judicial body to the home of the witness or his place of hospitalization.

We mentioned that making psychological contact and gaining the trust of the witness are essential for obtaining the expected result through the hearing. The tactical rules of listening are those applicable to them must be seriously verified and interpreted in a critical way (Ciobanu and Stancu 2017, 125-126).

Conclusions

From ancient times, the evidence with witnesses has been considered the first means of use in finding out the truth, having a special importance, because their statement can lead to solving the case. The whole action of forming these statements entails a series of information regarding the criminal act, at which point the witness tries to reproduce from memory what he perceived.

Starting from the definition of the notion of witness, according to article 97 of the Criminal Procedure Code, it represents the person who knows a fact or circumstance in connection with an act provided by criminal law and who should be brought to the attention of criminal prosecution bodies and courts, to find out the truth.

The judicial activity, in addition to the fact that it deals with the administration of testimonial evidence which consists in hearing the persons called to testify, must have sufficient knowledge regarding the tactics of listening to them.

The legislator stated that, in the hearing of witnesses, the use of violence is prohibited and, whatever their social situation, regardless of their age, religion or citizenship, they can be witnesses in criminal proceedings.

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