

Tactics of Elaborating Criminal Prosecution Versions

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ABSTRACT: Criminal investigation planning is considered a fundamental tactic used in the discovery and investigation of crimes. This is the link between the purpose of the criminal investigation and the concrete activities carried out to carry it out. The planning of the criminal investigation is materialized by establishing the objectives pursued by the investigation, by the versions and issues to be clarified in the criminal case, as well as by the methods and means available in order to clarify the issues of the investigated criminal case. In most cases, the etiology of a criminal act is not obvious, hence the need to clarify in all aspects of its nature and the circumstances of the commission. In such a situation, in order to establish the truth, the need arises for the elaboration of versions based on the first clues and material evidence, as many as there are at a given time.

KEYWORDS: concrete data, criminal investigation, explanations prosecution, tactics, versions

Introduction

Within the investigation plan, the versions of the criminal investigation have a central position because they materialize one of the fundamental tactical methods, meant to orient the whole activity towards establishing the facts and circumstances of the case, in a word, to find out the truth (Stancu 2015, 404).

Versions are possible explanations, some more plausible, some less, but not excluded. For example, a violent death can be the consequence of a heteroaggression (murder, fatal blow), self-aggression (suicide) or accident (sudden death by heart attack, death by inhibition, traumatic accident, medical malpractice, etc.) (Ionescu 2007, 175).

The version is the result of a complex process of knowing the reality, carried out by the criminal investigation body, in which it perceives, analyzes and systematizes the facts and factual circumstances, in order to draw conclusions about a concrete criminal case that has for instrumentation. From the point of view of forensic tactics, the version represents an assumption, a plausible explanation, a possible objective, provisional, given the various circumstances related to the case being investigated (Niță 2017, 29).

It should be noted that in the forensic sense the version means more than a simple hypothesis. The hypothesis is a method of knowing the natural sciences (physical-chemical, mathematical, etc.) or social sciences, representing a theoretical assumption based on scientific accumulations in a field. The versions of the criminal investigation are not abstractions but are based on concrete data on the factual situation, such as those resulting from the investigation of the crime scene (traces) and on various circumstances also concrete: mode of operation, penetration system, missing objects, interested persons who could have access, absence of alibis, etc. All these factual data are provided by the evidence already administered provided by law: the report of the investigation of the crime scene, the photographs taken on this occasion, the statements of the suspect, witnesses and the injured party, technical-scientific findings and expertise. Other non-procedural sources of information may be used in the elaboration of the versions: operative follow-up actions (filing), telephone conversations, anonymous letters, etc. The versions, even in the elaboration phase, must take into account the opposite situations, which are eliminated after the verification (Ionescu 2007, 175).

The versions appear to us as working variants of the judicial body that orients its research activities according to them, without seeking with all its might the confirmation or refutation of the initial opinion (major source of errors). After all, versions are logical assumptions and not the

result of impressions. Their value is all the greater as the data on which they are based are more numerous and more consistent in terms of probation. To this is added, as a decisive element, the experience of the prosecutor or the police officer, the methodological knowledge acquired through a long activity in the investigation of certain categories of crimes (hence the tendency for specialization: murders, thefts, car accidents, sex crimes, drugs, juvenile delinquency - see Cristean 2017, and other crimes - see Pascu, Buneci and Buneci 2020) (Ionescu 2007, 175).

Versions could be defined as possible explanations based on existing evidence and information on the commission of a crime. An advanced degree of possibility makes a version probable, but not yet certain until confirmation in all respects (Ionescu 2007, 176).

The activities must be carried out in compliance with all the principles of law, ethics and morals (see in detail Ciochină and Vedinaş 2012; Popa Tache 2017, 154-162) etc. The principles of the criminal procedural law are those elements on which the norms of criminal procedural law are based, guiding the behavior of the judicial bodies as well as of the other participants in the criminal process, these being applied in all criminal proceedings, regardless of the phase it also applies to other judicial proceedings in connection with a criminal case (Buneci 2020, 17).

The logic of the versions

In addition to the above, we believe that the psychological considerations regarding the elaboration of the versions are not without interest. In this field, the subjective factor - scientifically understood - is of crucial importance. Made in terms of thinking but starting from a material support, the shaping of the version involves three forms of reasoning: deduction, induction and analogy (Ionescu 2007, 176):

- The deductive reasoning consists in a transition from the general to the particular while in the inductive one the process is reversed: from the particular to the general.

- In the case of inductive reasoning, we start from isolated facts which, by extrapolation, respectively corroboration with general elements from the judicial practice, can suggest which crime was committed and in what way.

- Reasoning by analogy means establishing what happened based on partial similarity with other similar facts. The application of this procedure requires caution and alone cannot provide certainties but only indications that need to be confirmed by other means.

Version classification

The versions of the criminal investigation may concern either the criminal act as a whole or its elements, secondary circumstances, derivatives, related to the crime or the perpetrator, in relation to their extent and the scope of the circumstances, to which explanation the elaborated assumptions are directed (Niță 2017, 30).

Depending on the object and the extent of the versions, they can be:

1. *The main versions* are those which have as their object the investigation of the whole act and concern in particular the nature of the act, whether or not it has a criminal character and the constitutive elements of the crime, insofar as it is established that the case is a crime.

These versions must take into account the finding of objective and relevant explanations regarding (Niță 2017, 30):

- the objective side of the crime, in order to establish the circumstances related to the place, time and mode of operation in committing the deed;

- the subjective side, respectively the form of guilt, the motive and the purpose pursued by the perpetrator, by the perpetrator and the other participants;

- the subject of the crime, respectively: the number of participants in the commission of the act, the quality in which they participated in its commission, as well as the contribution of each one to it.

2. *The secondary versions* concern only one aspect of the act, such as certain circumstances that can be explained. It should be noted that a secondary version may become a primary version, depending on the new information obtained during the research. The data resulting from the verification of the secondary versions, serve to outline the explanations regarding the main versions, reason for which the secondary versions are elaborated and verified before the main versions.

The conditions underlying the development of the versions

For the elaboration of appropriate versions, able to serve to find out the truth in a criminal case, at least the following conditions are necessary (Niță 2017, 30-31; Stancu 2015, 406; Stancu and Moise 2014, 189-190):

- Possession of data or information about the investigated deed, which is appropriate and sufficient, in terms of quantity and quality. Data and information must be concrete and as accurate as possible. At the same time, the data and information from the referral alone, simple assumptions or assumptions based on experience, without real support based on rigorous and thorough investigation, are not enough. Usually, the source of the data is of a procedural nature, respectively: on-site investigation, statements of the injured persons, statements of the perpetrators, statements of the witnesses, documents submitted, expertise and findings, as the case may be, etc. However, there may also be extra-procedural sources, respectively: investigations, anonymous notifications, materials published in the press, etc., which must be thoroughly verified and corroborated with data of a procedural nature.

Due to the nature of these data, not infrequently false, it goes without saying that the criminal investigation cannot be constituted only on them (Mircea 1998, 223).

- The professionalism of the investigator, determined by the multilateral professional training, by his experience and intuition;

- The good faith of the investigator, consisting in his right intention and his abstention from causing harm, through his honesty and fairness; the elements of good faith represent the legal values corresponding to the moral values of honesty;

- The use of logical forms of reasoning, deductive, inductive and by analogy, to ensure that all possible hypotheses and versions can be taken into account, depending on any data and information that appears during the prosecution and trial, up to final and irrevocable settlement of the case.

Tactics of elaboration versions

Versions are formulated when several explanations can be given for the investigated deed or only for some aspects. The recommended tactical rules require that the factual data be sufficient in quantity and appropriate in quality. The requirement of “sufficiency” seems debatable to us and in any case should not be absolved. In the concrete conditions of the investigated case, the term may be ambiguous or uncertain. Who can answer exactly the question “how much data” is needed? The same goes for the qualitative condition which is equivalent to the probative value. Or, this is established by checking the version and not a priori. Another rule requires that versions be developed in connection with all possible or plausible explanations. Hard to appreciate what “everything” is. In reality, the imagination of the versions depends not only on the existing data but also on the experience and intuition of the investigator (Ionescu 2017, 177).

The main tactical rules that must be observed in the elaboration of the criminal prosecution versions are the following (Stelzer 1977, 190-191 apud Niță 2017, 31):

- the versions should be elaborated only for the facts or circumstances that may have more explanations;

- the versions should be made only on the basis of procedural data, supplemented only if necessary, with those from extra-procedural sources;

- the basis of the versions should be only the concrete data;
- the versions to be elaborated in connection with all possible explanations, which can be given in the investigated case;
- the versions should be well constructed from a logical point of view, and the problems to be clarified of each version should be formulated clearly and precisely.

Checking versions of prosecution

This is a necessary and most important step in establishing the truth, carried out through the activities covered and carried out according to the criminal investigation plan, in order to clarify all the issues related to each version. The criminal investigation body must proceed to the thorough and careful verification of each version, in order to eliminate all those hypotheses that do not conform to reality. From the generalization of the positive experience of criminalistics, some rules have emerged that must be observed when verifying the versions, these being the following (Aionitoaie and Sandu 21-22, Suciuc 1972, 501, Mircea 1998, 146 apud Niță 2017, 31):

- multilateral verification of all issues that need to be clarified in each version;
- the pair versions, which refer to the same fact or to the same circumstance, must be verified in parallel and not consecutively;
- all necessary steps must be taken to verify and undertake the verification of the versions in question;
- in case of contradictory results, the verification must continue until all contradictions have been definitively removed;
- the version check will be considered completed only when all paired versions have been removed, leaving only one, which is confirmed by the result of all verifications undertaken, of a procedural and extra-procedural nature, as the case may be.

Versions will be checked at the same time, not one at a time. The rule is correct, but not always possible to apply. That is why the expression “in parallel” seems to us more appropriate, which induces the idea of concomitance in a broad sense (Ionescu 2007, 177).

Priority in version checking

In practice, the specialists in the field have retained, as a guide, the order of priority in carrying out the activities of verifying the versions of criminal prosecution, an order that is based on logic and priorities of criminal prosecution, in any criminal case, thus (Niță 2017, 32):

- for the first time, those activities are performed to verify the versions meant to prevent the commission of new crimes, the destruction or deletion of traces, the concealment of the proceeds of crime and the evasion of perpetrators from criminal prosecution;
- in order, follow the activities that, through the possible results obtained, can contribute to the verification of all or most of the elaborated versions, gaining time and efficiency in solving the case;
- when several activities are foreseen for the verification of the same version or for the clarification of the same problem, the activities that ensure the obtaining of the most conclusive result regarding the verified version are first executed.

By interpreting and comparing the data resulting from the criminal investigation activities, it will be assessed whether a version is demonstrated, whether it needs to be further verified or whether another version/explanation is foreshadowed. Finally, the unconfirmed version is excluded while the version confirmed in terms of the evidence administered becomes objectively possible and plausible, i.e., it has a certain degree of certainty (Ionescu 2007, 177).

Conclusions

In order to draw up a complete criminal investigation plan, it is first necessary to analyze and take into account all the assumptions concerning the working versions, which are highlighted in the case under investigation, at the initial stage of the investigation. Against this moment, during the criminal investigation, until the completion of the investigations, depending on the activities carried out and the results obtained, hypotheses may appear regarding other versions, which initially could not be taken into account. Once highlighted, the new versions must be included in the prosecution plan, and all necessary activities will be planned and carried out to clarify the issues related to each of them.

The criminal investigation plan may take various forms, as one or more versions may be required. In complex cases, with more facts and more participants, plans will be drawn up in episodes or schemes, as well as files for each participant in simple cases, the research plan will include the activities to be undertaken or will be summarized in a file criminal investigation.

The main elements of a investigation plan, in a complex case, are determined in relation to the versions and issues to be clarified in each version, so that, through the activities carried out and the results obtained, the problems and versions established must be answered, but all within certain deadlines.

Taking into account the above, the investigator, in the investigation of a criminal case, from the moment he has a minimum of data and factual materials, which will allow him to elaborate versions and establish the problems to be clarified, must draw up a plan of criminal investigations with activities, including: the possible versions of the resolution of the case, the issues that arise and which must be clarified, in each version, the activities, methods and tactics to be applied to clarify the problems identified, as well as the necessary time, provided as a whole and in various stages, to solve the fixed problems.

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