

# ASPECTS OF CRIMINALISTICS TACTICS RELATED TO WITNESS HEARING

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## **Abstract**

*The article analyses some aspects related to witness statements, with regard to the actual tactics of hearing witnesses and the hearing of child witnesses. Judicial practice has well shown that giving evidence is the most important phase in the course of the activity carried out by judicial bodies, being the way for determining the facts, for finding the truth in the case referred for settlement. Giving the evidence in a correct and complete way, the value of the administered evidence and its correct and lawful evaluation are decisive for the judicial bodies to come to an intimate belief with regard to the factual reality on which the solution they pronounce should be based, the lawfulness itself of court rulings and other solutions given by the judicial bodies being dependant on these elements. In order to obtain the evidence and make the most of it in a criminal trial, legal activities or operations are necessary to discover it and to present it in a form which is perceptible for the judicial bodies, an aspect which is accomplished by legal means of evidence. Criminal doctrine and judicial practice alike have determined that for finding the truth in a criminal trial, besides the statements made by the suspect or the accused, the statements of the other parties in the trial have an appreciable contribution too. In this context, the contribution of Criminalistics – the science of crime investigation – to establishing the facts in a criminal trial is especially noticeable with the conclusions of forensic examinations and findings. The study put forward reveals some aspects of criminalistics tactics related to witness hearing in a criminal trial, as well as that the result of the investigation depends on how the activity of witness hearing is prepared and the compliance with all procedural rules. At the same time, as Criminalistics supports the witness hearing activity, it develops a particular tactical hearing procedure, starting precisely from the psychology of witnesses, because the tactical procedure is nothing but the reflection of a particular form of manifestation of the witness, of a particular lawfulness or psychological peculiarities. As regards the research methodology, the logical method and the quantitative method have been used.*

**Keywords:** *criminalistics tactics, witness hearing, hearing of child witnesses, the judicial bodies, criminal trial, crime investigation.*

**JEL Classification:** K14

## **1. Introduction**

The present paper aims to analyze aspects of witness statements, as regards the tactics of witnesses' proper listening and the hearing of witnesses.

The science of Criminology, in terms of witnessing, has developed certain tactical listening procedures, starting from their psychology, because tactical procedures are the reflex of a particular form of manifestation of the witness, of a certain legal law or particularity.

The criminal doctrine as well as the judicial practice have established that the finding of the truth in the criminal trial is an appreciable contribution, besides the suspect's or defendant's statements, the statements of the other parties to the criminal trial have it. In this context, the contribution of Criminalistics - Criminal Investigation Science - to establishing the truth in the criminal process is mainly observed through the conclusions of the judicial experiments and the findings. The presented study highlights issues of forensic tactics regarding the hearing of witnesses in the criminal process, and the fact that the outcome of the investigation depends on how this activity is prepared for hearing witnesses and observing all procedural rules.

Regarding the research methodology, the logical method and the quantitative method were used for the realization of the present material.

## **2. Witness statements**

The testimony of the witness as a means of proof has been known from far away, being the first means of proof used in judicial probation, because in those times, those who were knowledgeable

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in the book were few in number. That is why, naturally, the main evidence admitted, as a rule, when the parties were unable to obtain written evidence, were witnesses<sup>2</sup>.

In doctrine, it has long been shown that witnesses are the "eyes and ears" of justice<sup>3</sup>. The testimonies of the witnesses, the prosecution or the judiciary have different names: testimonies, witness testimony, witness testimony, testimony with witnesses, testimonies of witnesses, etc. In the Romanian criminal trial, in the current regulation made by the new Criminal Procedure Code, art. 97, this means of evidence bears the name of witness statements. The new Code of Criminal Procedure defines the notion of witness as a person who has knowledge of facts or factual circumstances constituting evidence in the criminal case<sup>4</sup>.

The following must be met in order to obtain the procedural quality of the witness conditions<sup>5</sup>:

- The existence of an ongoing criminal lawsuit before the judicial bodies;
- The existence of a natural person who knows facts and circumstances that can contribute to finding the truth in the process;
- Listening to that person by the judicial bodies on the facts and circumstances which he knows.

These are the conditions for the existence of which depends on the quality of the witness and are implicitly traits that determine the substantive content of this concept.

The direct perception by foreign persons of the offense committed and of some facts and circumstances that are important for finding out the truth in the criminal trial, and the obedience of those who perceive them by the criminal or judicial bodies for the purpose of knowing the truth is the specific of this means of sample.

The significance of the witness statements is particularly high, since these statements may result in factual elements useful for the resolution of the case and which are not undermined by the other means of evidence handled in the same criminal case.

In the literature, most authors, although stressing the importance and necessity of this evidence, appreciate that, often, it is uncertain, is shaky. This appreciation is also based on the fact that many scientific research undertaken in the field of psychology of witnesses has demonstrated that the mechanism of perception, fixation, memory and rendering varies from person to person according to its psychological development, degree of culture, the profession, the environment and the conditions in which it perceived those facts and circumstances, an infinity of other elements that originally act or overlap between the moment of perception and that of the rendering, so that in any statement it is inevitable the occurrence of an altering coefficient initial or subsequent deformation.

Criminology develops certain tactical methods of witnessing, starting from their psychology, because tactical procedures are nothing else but the reflex of a particular form of manifestation of the witness, of a certain legal law or particularity.

Considering the complexity and importance of witness statements, listening to this category of people requires a thorough previous training.

According to the rules of forensic tactics, preparation for listening to the witness includes the following activities: studying the case file; determining the persons to be heard as witnesses; drawing up the listening plan; Ensuring the conditions in which the obedience will be achieved; establishing the place and date of listening and ensuring the presence of the witness<sup>6</sup>.

In order to listen to the witness, it is necessary to study and analyze the entire material in the criminal case in which the witness will be heard because:

- a) The study of the material of the cause has as its purposes and the establishment of the facts the circumstances to be clarified by hearing each witness.
- b) Determining the persons to be heard as witnesses.

<sup>2</sup> N. Văduva, *Criminalistică – Tratat de tactică și metodică*, Ed. Era, Bucharest, 2009, p. 95.

<sup>3</sup> J. Bentham, *Traité des preuves judiciaires*, vol. I, Ed. Bossage frères, Paris, 1823, p. 93.

<sup>4</sup> Article 114 of the New Code of Criminal Procedure.

<sup>5</sup> R. Stănoiu, *Declarațiile martorilor*, in *Explicații teoretice ale Codului de procedură penală român*, The general part, Vol. I, Ed. Academiei, Bucharest, 1975, p. 199.

<sup>6</sup> V. Bercheșan, *Ascultarea martorilor*, in *Tratat de tactică criminalistică*, Ed. Carpați, Craiova, 1992, p. 131.

c) An important moment in preparing witnesses' listening is the drawing up of the listening plan. After examining the case file, the issues to be elucidated with each witness or category of witnesses identified are determined. Establishing the issues to be elucidated by obedience is obligatory in order not to omit the essential aspects known to the witnesses, of value for finding the truth.

d) In order to carry out properly the listening and the purpose it pursues, in relation to the nature of the case in which it is carried out, the issues to be elucidated and the situation of each witness, other preparatory measures, such as : inviting the parent, guardian, curator or educator, when the witness is a minor who has not reached the age of 14, inviting an interpreter, if the witnesses do not know the language of the criminal trial, selecting and preparing the materials to be used during listening and determining the way, the moment and the order in which they will be used

e) Establish the order in which the witnesses will be heard. As a rule, eyewitnesses, who have perceived the facts or circumstances directly, will be heard before indirect witnesses who have obtained the data through others or simply from a public rumor.

f) Establishing objective or subjective conditions that could influence the perception and memorization of criminal facts or circumstances. Judicial practice has shown that these conditions are much better established on the occasion of the reconstitution.

With so much data, the criminal investigation body can approach the witness from a position to ensure that it uses the most effective tactical procedures to obtain complete, honest and truthful statements.

### 3. The tactic of proper witness listening

The tactical tactics of listening to witnesses are very similar to those used to listen to the suspect or defendant.

Listening to a witness, especially when he or she is first heard, by the criminal prosecution bodies or by the judicial organs, goes through three main, dominant stages besides the criminal procedural rules and forensic tactical rules, namely the witness identification stage, the stage the free narrative and the stage of asking questions and listening to the answers given by the witness.

In the first stage, the witness is asked about personal details that allow his identity to be established in order to avoid substitution of persons. The data requested by the witness at this stage are the same as those requested by the suspect or defendant before the hearing<sup>7</sup>.

Also at this stage, the witness is told the subject matter of the case and is asked whether he / she is a family member or ex-spouse of the suspect or defendant, the injured party or the other parties to the criminal proceedings, if they are in friendship or hostility with these persons, as well as if he suffered any harm in the act of committing the offense<sup>8</sup>.

At the stage of the free narrative, as the new Criminal Procedure Code<sup>9</sup> provides, the witness is left to declare everything he knows about the fact or circumstances of fact for the proof of which he was proposed.

For the duration of the free report, the witness must not be interrupted, no questions should be asked. The uninterrupted witness has the advantage of knowing his personality, of the position he judges the facts he relates, of increasing his confidence in himself, seeing it useful to clarify the cause.

In this respect, it is necessary for each investigator to know the details of a great psychologist, Milton Cameron, who in his work "The Art of Obeying the Other. Secrets of a Successful Communication," says: "Knowing how to listen to the other is an art that is not easy to master"<sup>10</sup>.

If, after the free report, there remain unclear facts or circumstances, the judicial body will move to the third stage, that of asking questions.

<sup>7</sup> See Art. 107 and art. 119 of the New Code of Criminal Procedure.

<sup>8</sup> E. Stancu, *Tratat de criminalistica*, Ed. Actami, Bucharest, 2001, p. 404.

<sup>9</sup> Art. 122 para. 2.

<sup>10</sup> M. Cameron, *Arta de a-l asculta pe celălalt. Secretele unei comunicări reușite*, Ed. Polirom, translation of Dana Zamoșteanu, 2006, p. 25.

Questions are required because witness testimony may contain objections of an objective or subjective nature, the most common being<sup>11</sup>:

- distortion by addition, when the witness reports more than what he has perceived, exaggerating or imagining imaginary deeds;
- distortion by omission when the account is incomplete due to forgetting, underestimating the importance of a particular aspect, and as a result of possible bad faith;
- denationalization by substitution, in which facts, persons, objects are replaced, replaced by others, previously perceived, as a result of the similarities between them;
- distortion by transformation, such as changing the place of some details in time and space;

Witness statements will be recorded in the same way as the suspect's statements or the defendant.

#### 4. The tactics of listening to minor witnesses

The new Code of Criminal Procedure regulates only the way for witnesses to be heard minors. In this respect, the provisions of art. 124 of the new Code of Criminal Procedure regulates in detail the way of hearing witnesses under the age of 14.

As regards the protected witnesses, they may be heard without being physically present in the hall where the prosecutor is present or in the courtroom where they are audited by means of audiovisual means, according to the provisions of Art. 129 of the new Code of Criminal Procedure.

#### 5. Conclusions

1. Witness testimony as a means of proof is known from a long time, being the first means of proof used in judicial evidence.

2. The regulation of witness statements was made by the new Criminal Procedure Code at art. 97, the notion of a witness being assimilated to a person who is aware of facts or factual circumstances constituting evidence in the criminal proceedings.

3. The tactical rules for hearing witnesses are similar to those used for listening to the suspect or defendant and go through three main steps: witness identification, free reporting, and the question and answer phase.

4. As regards the tactic of listening to minor witnesses, the way of hearing minor witnesses under the age of 14 was detailed in the provisions of Article 124 of the new Code of Criminal Procedure.

5. This article introduces introductory aspects of tactical rules on hearing witnesses, which are necessary in the science of forensics, useful for bodies carrying out certain criminal investigation activities and students and legal practitioners.

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<sup>11</sup> E. Stancu, *op. cit.*, p. 583.