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Aspects concerning the hearing of witnesses

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Abstract. The subject matter of the present study consists of a theoretical and practical account of the modality of hearing the witness in the judicial process, also illustrated by the title of the present study, in this lecture I tried to deal with a series of theoretical and practical issues from the field of criminal procedure, criminalistics and penal, salts have been elaborated by various authors in the specialty polishes. We cannot talk about the key procedures applied to the hearing of witnesses, without knowing the criminal procedural provisions that regulate the given field, and at the same time, without knowing the personality of the witness from a psychological point of view. The conducted study deals with the well-known keys and methods regarding interviewing witnesses. Complete problems are addressed regarding witness depositions with obvious implications both in the criminal investigation phase and in the judicial sequestration phase. The given field has been subjected to numerous trials, taking into account the degree to which the criminalistic key procedures carry it, being a significant one, applied to the hearing of the witness, both from a theoretical point of view and from a practical point of view. The purpose and objectives of this work they consist in studying the mode of hearing the witness with a view to the fair settlement of the case. Achieving this goal requires solving several problems, respectively: Delimitation of the theoretical basis on the psychological process of forming witness statements; Identifying the rights and obligations of the witness; Defining the elements and types of information reception; Trying to remember the facts; Representation of the reproduction of facts; Presentation of preparation for the hearing of witnesses; Determining and clarifying theoretical approaches regarding the hearing of witnesses; Presentation of the means of recording the statements of the witness; The substantiation and highlighting of the general expectations of hearing minor witnesses; Highlighting the peculiarities of the hearing of other groups of witnesses. In the first chapter, I carried out a study on a general representation of the psychological process of training witness statements. Thus, I referred to the rights and obligations of witnesses, I related the elements and types of information reception, and I made an analysis on them. Also, we realized the resume of notions and the importance of the witness's statements, we highlighted the characteristics of the memorization of facts and of the reproduction of facts. In the second chapter, I made a study on the preparation procedures for the hearing of the witnesses and I related the key of the hearing of the witnesses, and in the last paragraph of this chapter I presented the means of recording the statements of the witness. In the third chapter, I performed an analysis of the general expectations of the hearing of minor witnesses and the particularities of the hearing of other categories of witnesses. In the end, I presented the impressions left after the study carried out, presenting at the same time different opinions, presumably also some recommendations regarding the studied field.

Keywords. criminal process, evidence, criminal investigation team, court, parties in the criminal process

The notion and importance of witness statements

Among the oldest means of evidence and among the most frequently used in the judicial process, are the statements of witnesses, victims and perpetrators. Since ancient times, legislators have used evidence and witnesses in court, but they viewed it with skepticism, limiting themselves only to some more important issues for the purpose.¹

Justice expresses a move to resolve disputes in the form of laws, custom, conventions and customs. Designed to be a function carried out independently and impartially, justice was formed as a system in the middle people, so that they can be defended when their legitimate rights and interests are violated, it is similar to the always triumphant justice.

Thus, justice has imposed itself as a way of judging the evidence and punishing the acts and individuals that have caused wrongdoing and suffering to other entities, but since the primitive times of mankind, by falsifying the remembered or imposed social norms. The rule of law would have been non-existent in the absence of justice, the absence of which means lawlessness and injustice.²

In the empirical and mystical visions of more distant times, judicial bodies could freely and randomly interpret evidence and witnesses. Evidence with witnesses was considered *the queen of evidence*, even if it was obtained by torture or by some means of coercion, to say a few salty substances they were known for. Likewise, there were also some rules showing the lack of grounds for a single witness, *testis unus testis nullus*, or some rules showed the need to double the number of witnesses compared to the six that were consulted before, in order to prove the contradiction of the depositions, these representing these formals from a quantitative point of view.

In the investigation of criminal cases, witness statements are the most frequently used means of evidence. In order to increase the importance of evidence and witnesses, some of the authors also referred to witnesses as the eyes and ears of justice.³

The reports of these persons assume or are known facts of a nature to attribute to the discovery of some circumstances in a criminal process, they were made and fixed in accordance with the provisions of the procedural-criminal legislation in force of our country, they represent the means of evidence, they can also be called *statements* or *statements of witnesses*.

Defining the witness, according to art. 114 of the NCPP, this is the natural person who has certain knowledge about the facts or about the circumstances that can serve to find out the truth in the criminal process initiated, and through the statements of the witnesses we can understand that such reports were made in front of the authorities the right of competent persons to have sufficient and necessary information for finding out the truth in a criminal trial. Analysing the given definition, it emerges that a witness can be any person who meets the requirements stated in the normative framework: young and old people, people with special needs (physical disabilities, mental illnesses), people who are in the country or in other states, some people are near or far from the court, some people are going to make revelations, some people are detained, some people know the state language and some do not, some people have the state protest of witnesses and some do not have a such a protest and salty people have

¹Al. Ionaș, I. Magureanu, Assault of persons in the criminal trial, Omnia Uni S.A.ST Publishing House, Brașov, 2001

²P. Buneci, I.T. Butoi, Witness on the land of justice. Criminal and psychological procedural perspective, Pinguin Book Publishing House, Bucharest, 2004

³O. Canțer, Hearing the witness. Guide for lawyers, S.n., Chișinău, 2013

minimal or even advanced skills necessary to use the specialized people who do not have such skills at all.

The witness, especially for lawyers, represents the main subjective source of information. Although we look at the witness as a source of information, we can mention that the way of hearing the witness does not differ from the way of hearing other participants in the process: experts, injured parties and accused.

Also, according to art. 115 of the NCPP, the parties and the main procedural subjects, namely the defendant, the complainant, third parties who intervene in the process voluntarily or forcibly, the suspect and the injured person cannot participate as witnesses. Exception from the obligation to testifying in the favour of the accused or the indicted, close relatives do it, presumably also the husband, wife, fiancé, brother, son-in-law, son-in-law of the suspect, the accused, the accused, they are not obliged to testify against them.

Unlike other means of evidence, the statements of witnesses can highlight data that are tangential to the circumstances constituting the subject of probation, including the circumstances of the commission of the crime, the methods and means used to assess the crime, the fate, the time and the manner in which it was committed.

Interviewing witnesses, as a legal means of summing up testimonial evidence, is a very complex activity, the development of which does not require special knowledge and refers to the psychology of witnesses, in the process of forming the advisor's statements. Of course, they can be asked to be witnesses and those people have been sentenced for perjury. It is necessary, however, that the statements of such persons be appreciated with maximum caution by the judicial body. With regard to minors, we emphasize that they can be asked to be witnesses if the judicial body considers that the minor has the capacity to perceive, remember and reproduce what he saw or heard.

The problem of the techniques of hearing the witnesses would not be put in the situation discussed, the witnesses would be cooperative, of good will, very intelligent, in the prime of their age, etc. Thus, we have to acknowledge that many treat differently, often intuitively, the witnesses in dependence on more than one pastor.⁴

The importance of witnesses in a judicial process is very high, especially since they are, in many cases, the only source of information. The importance of the evidence of witness statements is undeniable in the criminal process. Therefore, the judicial body must make every effort to identify and witness those persons who have knowledge of any act or circumstance, so that they can help to find out the truth and the operative and well-grounded solution of the criminal case.⁵

The importance of the witness's statement also results from the fact that the witness is, as a rule, disinterested in the conversation. The witness takes on its most vivid form, to reproduce the act of infraction in all its reality and in its many physical-psychic complexes. This remains, however, in the sphere of the abstract, even if the objective and subjective conditions are ignored by the judicial body in the sense that the subject perceived the fact or the circumstance in relation to it is answered, I also assume the possibility of intentional or unintentional distortion of the perceived reality.⁶

⁴ L. Cîrjan, *The trete of Criminalistics*, Penguin Book Publishing House, Bucharest, 2005

⁵ Anane Ivan, *Elements of theory and tactics of criminal investigation team*, Pro Universitaria Publishing House, Bucharest, 2014

⁶ I. Mircea, *Criminalistics, Didactic and Pedagogical Publishing House*, Bucharest, 1978

Although witness statements represent an important means of evidence in a process, the value of the evidence contained in such statements varies from full confidence to more serious suspicion. Therefore, an important problem in interviewing witnesses and assessing their statements is represented by establishing the extent to which the information obtained reflects the facts experienced and can represent the basis for formulating a conclusion. Professor Vintilă Dongoroz is of the opinion that in criminal matters, the statements of witnesses, constitutes a very important piece of evidence, and in the criminal process, the given evidence highlights the importance of frequent evidence, as a matter of law, and at the same time it is important for the realization of the purpose pursued in the lawsuit

It should be noted that the importance of the person being heard as a witness depends, to a very large extent, on the theoretical, practical and psychological skills, presumably and on the skills of the person conducting the hearing, whether he or she is an officer criminal investigation, prosecutor, judge or even attorney. Therefore, no matter how valuable the information the witness has, its usefulness and importance, the success of the hearings, depend to a large extent on the listening techniques applied.

The rights and obligations of witnesses

In order to prevent the refusal of the witness to appear at the summons of the criminal investigation agency, to give statements in relation to the case, to be informed about the circumstances of the commission of an infraction, contraventions, the legislation in force has provided and establishes certain obligations for witnesses.

In the specialized literature, different opinions are expressed regarding the obligations of witnesses. It is stated that two obligations are assigned to the witnesses, respectively, they have the obligation to appear at the location, on the day and time indicated in the statement and to reveal everything they know about any circumstances they experienced. Thus, under art. 120 par. 2 of the NCPP, the witness has the obligation to:

- a. be present at the summons of the criminal investigation team or the court to give statements;
- b. to submit truthful statements, to communicate his knowledge of the respective case and to answer the questions put to him, to sign his statements included in the witness's verbal hearing process;
- c. present, at the hearing of the criminal investigation body or the court, evidence for comparative hearing;
- d. accepts, at the request of the criminal investigation team, the corporal examination;
- e. be subjected to an expertise in ambulatory tests to verify the capacity to understand whether the circumstances are to be established in the respective court;
- f. to obey the legal provisions of the representative of the criminal investigation team or of the president of the court session;
- g. not to leave the meeting room without the permission of the president of the meeting;
- h. to respect the order established in the court session.⁷

Although we also refer to the rights of witnesses, they are protected by law against violence, threats in order to obtain information. Thus, according to art. 120 of the NCPP, the witness has the following rights, namely: to be subject to protective measures and to seek compensation for the expenses incurred in the criminal trial when the conditions stipulated by

⁷I. Dolea, Rights of the person in the criminal probation: the concept of promoting the private element, Editura Cartea juridică, Chişinău, 2009

the law are met. The witness whose life, bodily integrity, freedom, or property are threatened as a result of the fact that he has data on him and is expected to provide them to the judicial authorities and that constitutes consistent evidence regarding the commission of serious, especially serious infractions or the exception I'm serious, apart from the protest offered by the provisions of the NCPP, it is also protected by other legal institutions, as an example can serve the law regarding the protest of witnesses and other participants in the criminal process.⁸

The importance of the psychological process of forming witness statements

To the formation of the psychological process of witness statements, to one degree or another, all types of human sensations contribute. Some of them have a predominant role (visual and auditory sensations), others have a role that results from the predominant ones (tactile, olfactory and gustatory sensations).

In the literature of legal specialty, of criminalistics or of judicial psychology, the emphasis is placed on the veracity of the statements of a witness, even though it is of good quality, the appreciation of their probative force cannot be assumed without the knowledge of the psychological mechanisms underlying the formation revelations.⁹

Scientific research on the psychology of witnesses has shown that their statements, based on the psychological mechanisms of the process of listening to objective reality, have certain specific elements, conditioned by the lack of awareness of the judicial body's communication of these facts were obtained after the direct result with the space infraction, to be transformed into useful information for the criminal trial. The process of realizing the reality, to a large extent, depends on the capacity of each person to receive and store the facts with legal significance, to read them, to reproduce them in the form provided by the legislation in force, but also on subjectivism, with other words, by several leaders.¹⁰

All these represent the result of the process of reception and filing of the facts, followed by their reproduction in the surveys and in the form provided by the legislation in force. Although, we can mention that the statements of the witnesses are formed gradually from three successive stages:

- **Reception:** it this instance the witness and the help of his sense organs, perceive facts related to the committed juridical team;
- **Memorization:** i.e. storing and appreciating observed facts;
- **Reproduction:** by communicating them orally or in written form to the criminal investigation team.

Regarding the reception of information, we can mention that the sensations have a decisive role in the formation of the testimony, indicating the typed procedures can be detached from the specifics of the visual and auditory perception.

The reception represents the reflection in consciousness of the data related to the crime and its perpetrator. It is realized on the basis of sensations and perception, which constitute the initial phase of the psychic process of self-discovery.¹¹

Sensation is the impression received by the sense organs, being strongly influenced by the surrounding reality.

⁸Dorăș Simion, *Criminalist*, Publisher Cartea Juridica, Bucharest, 2011

⁹G. Alecu, *Criminalistics*, Ex Ponto Publishing House, Constanța, 2008

¹⁰A. Andronache, *Juvenile Justice*, Chișinău, 2014

¹¹A. A. Gumenco, *International collaboration in the field of witness protest*. In: Such problems regarding the protect and the security of the persons involved in the criminal process, 2013

Perception, is this psyche of perusing the sensations, ensures the soundness of the object or the person, thus contributing to its identification.

Perception of spatial surroundings of the object imposes carelessness to establish the relationships in space, namely: the distance between the witness and the victim of the crime committed, the distance between the people around and the object, the positioning of the object in relation to each other.

Sensory perception can be realized by several factors, salt in the specialty literature is divided into objective and subjective factors. The objective factors are the circumstances in which he lost the perception of the event, and the subjective factors are characterized by the psychophysiological silence of the witness and his personality traits. The objective factors can be: the intensity of the stimuli, the angle of observation, the psycho-physiological conditions associated with various diseases and age, the emotional state associated with it, the degree of understanding of the perceived phenomenon and the time interval between the moment of perception and the beginning of reproduction.

Another phase, salt contributes to the formation of witnesses' depositions and replaces **memorization**, salt in turn captures three moments: the assimilation of information, its preservation and restoration.¹²

The last phase of formation of witness statements is represented by **the reproduction of information**, the criminal investigation body or the district court. The soundness and completeness of the reproduction are conditioned by the witness's skills and abilities, as well as by the witness's listening skills and the behaviour of the persons performing the hearing. Depending on the hearing modality and the atmosphere at the time of the hearing, the witness may present distorted information, depending on the will of the witness. The distortion can be caused by the emotional state in the salt, it is in the process of persevering the information, and the salt is in the exaggeration of the criminal act, of the physical, material and moral damage caused.

Information reception

The hearing of witnesses by the criminal prosecution bodies or by the court in the criminal process cannot be carried out, without the persons carrying out the hearing possessing skills in the field of judicial psychology.¹³

The process of formation of witnesses' statements involves a *moment of obtaining* the specific information of the crime or the perpetrator, in particular the witness, through the senses, perceives the circumstances related to the committed act, *a moment of memory retention* of the perceived information and *a moment of communication* to the assessor details of the judicial bodies in the room of reproduction or reacquaintance.

When forming the given process, all types of information are involved, and some of them are more important, such as visual and auditory sensations and others less important, such as tactile, olfactory and gustatory sensations. An important moment in the interview of the witnesses, is the identification of the measure in discussion, the events are reflected and although they can represent the basis for the formulation of the conclusions. It has been proven to be due to lies or probes, the testimony given by the witness does not reflect the reality, and

¹²M. Gheorghită, Protect of witnesses, Lumina Lex Publishing House, Bucharest, 2003

¹³Anane Ivan, Management of criminal investigation team, Pro Universitaria Publishing House, Bucharest, 2014

all these can be lost by the personality of the witness and the circumstances in which he perceived the facts.¹⁴

The countless researches carried out on the psychology of witnesses demonstrate that the processes of perception, reception, memorization, reproduction vary from person to person, due to the fact that each person has his own level of psychological development, maturity and education, as well as the profession held by the witness and the circumstances and how they perceived the circumstances of an illegality.¹⁵

The defining elements of sensory reception are the first stage of formation of the witness's statements, it goes through several successive stages, namely:

a. Sensations: auditory and visual sensations play an important role.

➤ **Auditory reception:** Although we refer to the auditory testimony, the statements made by the witness can be reproduced from the perceived auditory sensations and from other categories of sensations. The judicial body cannot ask the witness to reproduce only those words or sentences known to him, but he cannot ask the witness to report in detail the circumstances of the crime. This is what the witness can reproduce, it represents the very content of the idea, because it is not possible to remember in detail all the circumstances of the production of an illegal act. Also, at the hearing, the information received must be taken into consideration and the conditions of the investigation in salt. The wrong localization by the witness of the sound source in the scene of committing the infractions, can take the form of illusions caused by noises of a messianic nature.¹⁶

➤ **Visual reception:** Visual sensations are considered the most common deposition, since in all criminal cases there is a persistent lack of awareness to more reliably represent the crime scene, the spatial localization of the objects, the positioning of the objects in relation to the people present at the scene and the action. The judicial bodies must take into consideration the different rhythm of the seizure, depending on the facts experienced during the startling from light to dark, in order to be convinced whether the facts were perceived in the initial, intermediate, final moment of the seizure. When evaluating the statements of the witnesses formed in such probes, the judicial bodies have the obligation to take into account the aforementioned rules.

b. Perception: it represents the stage of synthesizing the sensations, it allows the recognition of the object or the person, presumably their identification.

➤ **The perception of the spatial positioning of objects:** the quality of the perception decreases with the distance, and the greater the distance, the weaker the perception.¹⁷

➤ **The perception of movements:** it is important when, there is the carelessness to predict the movement of some objects, of some parts of the snake, it can contribute to establishing the mode of submission of the illegality and the reasons for its production.

➤ **The perception of time:** consists in the localization in time of the alleged crime and of other activities related to the crime or the perpetrator, predicting the time duration of the crime, especially the acts, of the activities related to the crime or the perpetrator and predicting the succession in time of some circumstances related to the crime or the perpetrator.

¹⁴T. Bogdan, I. Sîntea, R. Cornianu-Drăgan, Human behaviour in the judicial process. Publishing House of the Ministry of the Interior, Bucharest, 1983

¹⁵I. Mircea, Criminalistics, Didactic and Pedagogical Publishing House, Bucharest, 1978

¹⁶N. Mitrofan, V. Zdrenghia et al., Judicial Psychology, Şansa SRL Publishing House, Bucharest, 1994

¹⁷S. Nestor, E. Bargan, Procedural guarantees of the minor in the context of the criminal process. In such problems regarding the protect and the security of the persons involved in the criminal process, 2013

➤ **Sensory perception** can be realized depending on several factors, they are called *objective factors* and *subjective factors in the specialty literature*. So:

1. Objective witnesses are conditioned by the circumstances in which the perception is lost and represent such a category of states, contextual situations of the perception, which can influence the testimony favourably or unfavourably, especially the conditions of time and loss. These conditions include: visibility, audibility, duration of perception, acuity of sense organs, dissimulation of appearance.¹⁸

2. The subjects, the most important ones are: the knowledge of the perceptive organs, the age of the witness, the level of training and the profession, the attention to the moment in the moment it comes in the area, the type perceptually, but also the salt distortion factors are also typical of the general laws of sensory, together adding the group of salt elements could jam or distort the reception of information.¹⁹

Memorizing the facts

The basis of this phenomenon is the plasticity of the nervous system, it consists in a person's ability to imprint on him the things and phenomena he perceives from the outside world and to reproduce them in his consciousness.

Memorization is a psychological process of ordering and storing impressions regarding perceived objects and phenomena, the basis of this process are the specific nerve connections that are born in the brain stem due to the human's sensor activity. From a psychological point of view, *memorization* represents a set of methods of imprinting, preserving, reacknowledging previously acquired experience and events. *The memorization process includes three phases:*

- a) Of assimilation (memorial);
- b) To retain, to keep;
- c) To restore, restore.

The gathering of information is carried out through the processes of memorizing and keeping the elements of information related to the content of the action the witness participated in. In some situations, the subsequent reproduction is more precise and more complete than the previous reproduction, and yet, in the meantime, no additional repetitions have occurred²⁰.

It remains in the literature of the specialty, that the storage in the long-term memory is performed in the soundness probes of several series of information and filters the information. In the long-term memory, memorized information cannot be stored unless it has been repeated. When we receive a phone number from a colleague, he probably has it stored in his long-term memory, during the call the opposite is remarked, although we do not repeat it until a new dial, we lose at least several digits and we have to see him one more time.²¹

In certain cases of accidents, when the expertise is done by car investigators or specialists in the matter, the reporting of the facts is clearer, keeping in mind even the most detailed ones. Those uninitiated in the problems of cars, circulation, and assistance cannot reproduce them with the luxury of detail and competence. At the same time, the judicial body must take into account that the memorization is influenced by various factors: the emotional

¹⁸G. Olteanu, C. Voicu, C. Păun et al., Assaulting the person in the context of the investigation, Publishing House AIT Laboratories srl, Bucharest, 2005

¹⁹B. Tiberiu, Problems of legal psychology, Scientific Publishing House, Bucharest, 1973

²⁰R. Vozian, Importance of witness statements in the process of establishing the truth. In: Such problems regarding the protect and the security of the persons involved in the criminal process, 2013

²¹M.M. Pivniceru, C. Luca, Guide to hearing the child in judicial proceedings, Publishing House Hamangiu, Bucharest, 2009

state, the interest, the competition, the degree of understanding of the perceived phenomenon and others are expressed differently in relation to the age of the person interviewed as a witness.

From a psychological point of view, memorization means the set of procedures for memorizing, keeping, reacknowledging and reproducing previously acquired experience, and is characterized by:

➤ *Voluntary memorization* involves the perusal and ordering of information, where the deliberate witness repeats for himself the perceived facts, makes notes, writes down certain data in order to make the statement more exact and complete.

➤ *Involuntary memorization* does not presuppose the existence of the memory and does not present a passive, passive accumulation of acquired information. The efficiency of the testimonies formed on involuntary memorization cannot be doubted, although the judicial body, in its activity of assisting witnesses, will take into account the factors that influence the memorization process, namely:²²

a. *Individual types of witness memory: visual memory, auditory memory, motor memory, logical or mechanistic memory and emotional memory.*

b. *Psychophysiological affections, caused by different diseases and age.*

c. *The emotional state caused by the perceived phenomena.*

d. *The degree of understanding of perceived phenomena.*

it is the time interval between the perceptive moment and that of reproduction.

Forgetting acts on memory, it manifests itself in the form of the impossibility of re-constitution of some memorized data, or the impossibility of re-recognition of moments experienced in a new confrontation with them, or their erroneous re-recognition. Thus, we distinguish the following factors: the time elapsed from the moment of sensory reception, the interest in remembering the perceived event, the affections with incidence on the memory, for example prolonged stress and the emotional state of the witness. The fill-in phase after a first recall, the delayed enhancement of recall versus immediate recall, is known as reminiscence. Factors that can influence reminiscence are: the attitude, the subject's interest in relation to the memorized material and the age of the subject.²³

Reproduction of facts

The re-establishment of previously received, digested and stored information refers either to the re-acquaintance of objects, persons or situations repeated more than once by the witness, or to their verbal reproduction. Reconciliation admits the existence of an image, of a rendering, restored, it can be compared with the object, the person or the fate shown to the subject. The lack of information, its erosion, caused uncertainty in recognition, hesitations in disclosure, subjective uncertainty.

It resonates although, an object, a person, or a loss presented to the witness, means to decide, although, it is an old information. However, recognition memory in normal and adult people usually works well and, in any case, easier than restorative memory or reproductive memory. Reproductive memory does not work as easily as resonating memory, but in the context of reproduction, the operation is not a simple yes or no decision, and a multitude of jumping strategies.

²²D. Roman, T. Vizdoagă, A. Grigoriu, *Organs for clarifying legal norms*, Cartier Publishing House, Chişinău, 2001

²³D. Simboteanu, *Legal hearing of victims/witnesses of abuse and neglect. Guide for professionals*, f. ed., Chişinău, 2009

Refreshing, let's say refreshing from long-term memory, encounters difficulties not only when it comes to replaying some sequences of events, but also when we have to remember a name or a word.²⁴

For example, if the witness was present at an exchange of words between two individuals, he may be asked if A offended B. If the witness gives an affirmative answer, he is asked to repeat. He can say samurai or slave. Such expressions show an active search in long-term memory and the strategy of resonating similar elements, either as meaning or rhyme, etc., but with the restriction of having approximately the same number of informational elements (even the same number of letters). It is interesting that the witness will call you a samurai or a drunkard and very unlikely a robber, although this word expresses an offense. The given example familiarizes us a little with the mechanisms of reproductive memory, this is how it functions in the context of a very simple situation. Closely related to the restoration of the contents stored in the memory, there is the problem of forgetting. We can forget the content of a discussion, the sequence of ideas from a lecture, or not be able to extract the square root of a number, although, in the old days, we may have learned this relatively simple operation well. Forgetting is an everyday phenomenon, but amnesia is a more serious form of forgetting and constitutes a pathological symptom.

The first researcher who tried to do detailed investigations in this field was H. Ebbinghaus in 1885 in the book *Memory: A contribution to experimental psychology*. He gave, in order to memorize, some people, a large number of meaningless syllables (pas, dol, fog, etc.). Asking the subjects to reproduce the memorized syllables, it was found that only 50% of more than 20 of the memorized syllables were forgotten, after an hour 60%, and after 8 hours 70%, and during the rest of the time only 20% were retained. For this reason, I consider that in any testimony it is mandatory to state exactly how much time has passed since the witness accepted the event and is aware of the loss, it can be accompanied normally.

The recent essays insist on the fact that they are called forgotten facts, basically they are memorial contents on the facts, we cannot restore them easily, and with great difficulties. Information from long-term memory has great stability. Thus, in a dream or in a state of hypnosis or through psychoanalytic methods, images and events reappear, even though the witness considered them long forgotten. Resists reminders: embarrassing, compromising, considered shameful facts. In addition to the mentioned categories, the phenomenon of negative interference between information or between old and new actions also causes forgetfulness-like dysfunctions. Both forms of re-establishment, respectively, resonating and reproduction, can be distorted due to the suggestibility of the witness.

Any experienced investigator knows how rare it is to meet people who speak intelligibly, restrainedly, with few sentences but are quite restrained, always giving relevant elements, of great reliability, that can help in solving the case.²⁵

No matter how impartial and disinterested a witness may seem to an event he participated in or to the protagonists involved, he cannot get rid of some of his attitudes. Attitudes, being part of the social components of the personality, constitute sets of dispositions, interests, opinions or ideas that imply both a certain expectation and a certain reaction.

²⁴Emilian Stancu, *Treatise on Criminalistics. A-VI revised and added edition*, Universul Juridis Publishing House, Bucharest, 2015

²⁵Emilian Stancu, *Criminalistics. Technical and tactical elements of criminal investigation 2nd Edition*, Universul Juridic Publishing House, Bucharest

Preparation for the hearing of witnesses

The success of interviewing witnesses is ensured by a thorough preparation of the interviewer, which is replaced by ensuring the conditions for conducting the interview. The lack of preparation for the examination of witnesses, results from the judicial loophole, both in criminal trials considered simple and, even more so, in complex trials.

Since the preparation of the interview of the witnesses is carried out according to certain coordinates, there are no unusual situations, some of them would acquire a certain priority, therefore, each sequence of the preparation has its importance, and all the sequences form a system, ensuring the success in conducting the interrogation to the witness. Justified, it is stated that the obtaining of some truthful and complete disclosures, intended to lead to the discovery of the truth, is influenced and the preparation for the hearing was done with a grain of salt. Not infrequently, the lack of preparation or the superficiality in carrying out such an activity have resulted in the obtaining of poor results, the repetition of the interview, unnecessary expenditure of time and effort, presumably also the postponement of the proceedings, with particular consequences on the judicial finality.²⁶

The preparation of the interview of the witnesses is an absolutely necessary rule, especially during the criminal investigation phase, and it is respected in all circumstances, regardless of the level of difficulty of the trial. Thus, the preparation for the hearing of the witness involves the study of the criminal file, the identification of the persons to be interviewed, the identification of the personality of the witnesses, the establishment of the fate, the moment and the mode of citation and also, the preparation of the materials that can be useful for the hearing of the witness.

a) ***Studying the existing materials in the case file:*** It is the first step in the judicial team and has a decisive role in ensuring the proper conduct of this activity. The careful, competent examination of all the existing material in the case file ensures the avoidance of negative opinions in the interview process. But from this phase, the criminal investigation body foreshadows the entire path of judicial probation, where the interview of witnesses constitutes an essential stage.

The thorough examination of the materials of the South has the following conclusion:

- the establishment of the nature of the committed deed, of the circumstances, and the social values on the evidence have been spoiled;
- the fate and the time of the commission, the way they were put into value through scientific means, the traces and the material proof, it is assumed that the knowledge of these people perceived the illegal activity;
- these persons can relate facts and circumstances of a nature to serve to find out the truth and how they made the perception: directly, mediated or from public rumour;
- these conditions are necessary to carry out the interview, in relation to the age, state of health, correlated with the psychological profile of the person who can testify in the criminal process;
- the existence of impediments in assisting certain categories of people and the legal modalities are to be used.

At this stage, there is an examination of all the evidence, taken individually, carefully weighting the value of the evidence, the seriousness and sincerity of the source from which it comes, in order to determine which facts or circumstances are proven by the existing evidentiary

²⁶Anane Ivan, Investigation of the criminal investigation team, Pro Universitaria Publishing House, Bucharest, 2014

material, and circumstances will be clarified and some of them will be clarified, by interviewing the witnesses.

b) *Establishing which witnesses can be heard:* When identifying witnesses, the criminal investigation team will take into account the results obtained at the time of conducting the search in front of the victim, the searches carried out and other criminal investigation activities that can indicate the persons from among them can be identified the witnesses. After the following persons to give statements and witnesses have been established, it is necessary to establish the manner and order in which the witness will be called to report to the criminal investigation body about the events he hears about the commission of the crime. According to art. 257 NCPP of Romania, the summoning of witnesses can be done by written, telegraphic or telephone summons and by electronic means.

Among the persons involved in the committed deed, special attention must be paid to those persons who are to give statements as witnesses, in the sense that a certain order of hearing must be determined. The nature of the committed act directs the investigations of the criminal investigation team, for the identification of witnesses. Thus, the judicial body can easily identify the witnesses in the case of embezzlement (these persons have control and verification of the management) and in the case of the road traffic accident, when the author leaves the scene of the crime, the specific traces of the nature of identifying the means of transport hit the news points to certain categories of people (car drivers, diners, young people) who can be interviewed as witnesses.

A particularly important source in the identification of witnesses is the complaint or denunciation of the injured person, in the content of which the witnesses are nominated whether they perceived the illegal activity in its entirety or only its sequences. A certain reserve is imposed on the persons who have been victimized under the guise of sincerity, because they may exaggerate in their depositions either out of solidarity with the injured person, assuming the provocative behaviour of the victim, or due to the change of role or the understandings that have occurred. The scene of the crime should not be neglected either, it can be an important source in the identification of the witnesses in the region of those who performed the service in the vicinity of the scene of the crime, or those who moved to the service or to their residence.²⁷

In the specialized literature, it is stated that the mode of operation and the time of the commission of the offense can provide clues regarding the categories of people from among others, the witnesses can be identified, such as, in the case of a murder committed with a shotgun, where the sound of the shot could be heard by the people near the crime scene.

After the persons have been identified, they will give statements as witnesses, insisting on the establishment of a certain order in the interrogation, in the sense that, first of all, those persons who directly perceived the facts and actual circumstances will be heard I can contribute to finding out the truth.

The source or the source of the testimony constitutes the fundamental criterion on which the order of summoning the witnesses during the interrogation is based. The judicial body is interested in the way in which the facts or circumstances to be reported were perceived, since the visual perception has, in relation to the other modes of perception (auditory, gustatory taste, etc.), a greater importance, representing the source principle of assimilation of information.

Also, the soundings in the salt are important, the perception was realized, in this category the atmospheric conditions, of visibility, brightness, the existence of sources of

²⁷Anane Ivan, Elements of computerized records of the person, Pro Universitaria Publishing House, Bucharest, 2015

jamming, obstacles, etc., are used in this category, the age of the witness, the life experience are associated with the process, its emotional architecture, the existence of interests, etc.

c) ***Knowing the personality of the witnesses:*** Before the criminal investigation team can proceed to the interview of an accused person as a witness, but also during the preliminary interview, it must obtain a minimum of data regarding the psychophysiological peculiarities and personality traits of the person to be interviewed. The minimum assessment includes: the state of health and receptive organs, the profession, the prevailing knowledge and interests, the person's age, family status, loss of income, even if he has no criminal antecedents and his relations with other participants in the process are good.

In regard to *the knowledge of the person to be consulted*, the difficulty of interviewing the witness is unanimously acknowledged, so different strategies have been determined, based on the interview prior to the interview or on the interview during the interview, depending on the nature of the committed act. What must be emphasized is the fact that the questioning of a witness cannot be carried out without hearing anything about his person, since such questioning is reflected in the content of the statement and affects the judicial finality.

The choice of the moment when the confession of the witness is to be realized differs, in relation to the nature of the offense committed, the investigations in which the offense was committed, the number of persons who are convicted, several circumstances, presumably and the clarification of some moments with the help of witnesses.

In this way, the testimony of the witnesses called to verify the statements made by the perpetrator and the possibility of embezzlement or fraud can be carried out in good circumstances and during the interview. In such cases, the performance of pre-hearing activities, considering the large number of people to be interviewed, would lead to unjustified expenditure of time and effort, and insincere revelations can be removed by the depositions of other people interviewed in the hearing.

From the judicial practice, the rule according to which the interview of the witnesses must be carried out before the appointment to the hearing was taken, this being the basis for the interview strategies of the witness file. This presupposes the establishment of the identity of the witness, presumably other data with reference to his personality. In addition to the identification data of the witness, the criminal investigation body or the person who identified the witness, has the obligation to send as much information as possible with reference to the mental health of the persons who are going to submit statements as witnesses.

The room for obtaining information to characterize the person appearing as a witness is the collection of data on the personality of the witness. This kind of information must make available to the judicial body some elements for the assessment of the witness, under the report of the moral environment of the facts is sprinkled in the social environment.

The witness must also be seen through the lens of the relationships and interests he has in mind, combined with his emotional dispositions due to the perceived circumstances, which may determine partiality or a certain insincerity. The subjective position towards the parties involved in the conversation should not be ignored, due to the incompatibility between the testimony of a witness and the testimony of a party in the criminal process, and the presumption of insincerity, sympathy or antipathy, negative feelings of fear or fear of being related to one of the parties. determined of the threat made by the accused or the accused, these facts can constitute sources of distortion of the testimony and they must be known before the interview.

I believe that the preparation of the interview plan of the witness is an activity reserved for important cases, but the more difficult ones are expected to be against the organization, interview and planning principles of the criminal investigation activity. The planning of the

interview of the witness should not be restricted only to rare cases, when his statements regarding circumstances related to facts presented in a field of great specialty, less known to the judicial body, or when the urgency of gathering evidence determines the anticipation or verification to a significant number of people.

In less complicated hearings, when the statements of the witnesses have a limited scope, on a specific fact, the search form is drawn up, it captures, in addition to the data related to the hearing, the people will be interviewed and the problems will be clarified through the interview, other criminal investigation activities not being excluded: searches, confrontations, and arrests.

The elongation of the seal is paid at the end of the preparation in view of the study and is based on the elements resulting from the studies of the guide, the stable of the persons, the way and the order and the order, you look at the importance of the great merits.

Obtaining complete explanations largely depends on the way in which the questions are formulated, the order in which they are addressed and the psychological moment in which they are placed. The order of the questions must follow a natural, logical line, so that one question prepares the other, flows naturally one after the other. When it is assumed that the witness will be in a position of re-habitation, the element of surprise must be realized by addressing some unexpected questions, so the questions are supposed to be provided on several variants and backup questions are formulated.

Taking into account the position of the witness of good character or bad character, the judicial body must represent the probable answers it will get, and these will constitute the starting point for formulating other questions.

The content of the plan refers only to one witness and will have the following structure:

- the problems must be fully or only partially clarified;
- sample media will be used;
- the method of presentation of the certificate and the moment when it will be carried out;
- the existence of some variants of questions for crime witnesses.

The witness interview plan is indicative, and during the interview it can be modified or supplemented, depending on the attitude adopted by the witness. The psychological state between the investigator and the witness is realized through questions or discussions external to the everyday life and always on the coordinates of the activity paid, causing the witness to dialogue, to expose his experiences and the results obtained. The calm, serious, understanding attitude towards others due to emotions, reduced intellectual baggage or the fact of being in front of the authority for the first time and making errors in their statements, constitutes the premise of an atmosphere perfect for dialogue.

The reception of the witness was done in a civilized atmosphere, even if this is a bad environment. The observance of the remembered respect not only in regard to the greeting, but also throughout the interrogation, led to the establishment of the environment, to the obtaining of complete and truthful statements.

d) *Establishing the hearing order:* After having established the issues to be resolved or verified, it is necessary to establish the order in which the witnesses will be heard. As a rule, the main witnesses are heard, since they directly witnessed the events of the crime, they directly assisted in the commission of the criminal act, they will be interviewed before the indirect witnesses, and they obtained information from other people. When establishing the hearing order, the possibility of verifying the statements of the accused, of other witnesses, presumably also the depositions of the victims, is also taken into consideration.

e) **Establishing the moment of hearing:** Another key element, which is closely related to the order of hearing, is establishing the moment of hearing or the loss of hearing. The moment of hearing a witness is carried out taking into account several factors of fact, the criminal prosecution body must keep in mind, such as:

a. Avoiding a possible agreement between the witnesses, which consists in the fact that the summoning of the witnesses must be done at different times or days, so that they do not have the possibility to meet at the criminal investigation body and do not have enough time to communicate the circumstances to the other, the statements made. It is reorganized that the witnesses summoned on the same day and at different time intervals, be invited to different meetings. This would significantly reduce the number and a possible agreement between the witnesses;

b. When establishing the moment of the hearing of the witness, the organs carrying out the hearing must take into account the activity program and the profession of the witness to be heard;

c. The location of the hearing of the witness is not expressly indicated in the legislation, as a rule, it is the headquarters of the organs that conduct the hearing. In some situations, the hearing can even take place at the service, at the hospital, at the place where the crime was committed;

d. In the end, the preparation for the hearing of the witnesses, unexpected, sometimes and the creation of good conditions for the development of the given activity, the preparation of the necessary materials for the explanation and assessment of the facts are closely related to the ordinary of the hearing.

Key to witness interviews

The direct hearing of the witness is a procedure no less important than the preparation for the hearing, the result of which depends on the skill of the person conducting the hearing, on the ability to find a common language with different people, on the ability to obtain the witness's confidence.²⁸

The procedures for hearing witnesses can be divided *into three categories*:

- From the first category, apart from the procedures aimed at establishing the psychological state with the witness, fact represents one of the main factors that depend on the hearing of the witness, and the obtaining of something acquired or acquired.

- In the second category, following such procedures helps the witness to restore his memory and reproduce the information obtained after entering into the situation with the criminal act.

- And this is the third category, following the procedures applied by the criminal investigation body, in the cases where there are doubts about the veracity of the statements, and they are influenced through a psychological influence.

The categories of procedures mentioned above must be applied in all three consecutive phases of hearing the witness, namely: introductory, free narration and the phase of recording the answers to the questions addressed to the witness.

In the first stage, the hearing of the witnesses is carried out after the summons of the witness in accordance with the provisions of art. 114-124 and art. 257 of the NCPP of Romania. In cases where the witness is serving a custodial sentence or is detained, the summons is carried out through the administration of the detention institution, which must ensure the person's presence at the summons.

²⁸Anane Ivan, Elements of criminal procedural law, Pro Universitaria Publishing House, Bucharest, 2015

After the witness has appeared at the criminal investigation body or in court, the body that conducts the interview must establish his identity, asking him to tell his name, surname, age, domicile, marital status, education and others, and all such statements of the witness must be verified on the basis of these identities.

After the witness has been identified, his rights and obligations are explained to him, he is documented with the situation and the circumstances related to him, he was summoned to testify, being warned, to bear criminal liability for giving false statements or refusing to give statements in accordance with the provisions of art. 120 para. 2 lit. d) from NCPP of Romania. At the end of the introductory phase, the criminal prosecution body must establish the relationship between the witness and the witness, presumably also with the persons involved in the criminal process, the possible material or moral interests of the witness and other circumstances that may raise suspicions about the honesty revelations.

Bearing in mind the above-mentioned, when hearing the witness, it is necessary to keep in mind and respect several *key rules*, namely:

a. The actual hearing of the witness must begin with the establishment of the identity of the witness, the prevention of criminal prosecution and the taking of the oath, and also, the establishment of the degree of kinship;

b. The setting of an interview is correct, it must be characterized by seriousness, and without stressful events that could distract the attention of the witness in any way;

c. After the witness was met with a benevolent atmosphere, he will be asked to express and freely convey what he hears about the usual situation of the salt that was brought to his attention;

d. Helping the witness to report what he heard orally, with questions addressed to the key, without any suggestions, in the cases where the witness has a low intellectual level or for various reasons it is difficult for him to express himself;

e. In the cases when the witness deviates from the subject, he must be interrupted with a big key, and addressing the questions would reorient him to the subject of the discussion;

f. During the questioning phase, they will be asked in such a way that they are clear and understandable to the person being heard, with reference to the facts perceived by the witness.

In the case of the first stage, the criminal investigation team uses certain *key procedures* to obtain the psychological status of the witness to obtain honest and complete statements, respectively:

- the timely and correct reception of the witness, not having any importance whether the witness himself, the criminal investigation team, the accused's lawyer or the injured party summoned. It is necessary to predict that keeping the witness at the door for a long time, the lack of respect, of attention, can awaken the witness to a state of indignation, dissatisfaction and even loss of psychological integrity;

- the form of address, speech and behaviour of the criminal investigation team, contribute more or less to establishing the psychological status;

- the appearance and the serious and benevolent attitude of the criminal investigation body towards the witness and the accounts he had given them. Before proceeding directly to the hearing of the witness, the criminal investigation body must first of all introduce himself, communicate his name, surname and the position he holds;

- in this form, the witness is explained his rights and obligations, in accordance with the provisions of the Romanian Constitution and the provisions of the NCPP, in particular, not to

testify falsely. In relation to witnesses who are of good character and who wish to contribute to the establishment of the truth and to the identification of certain facts related to the crime committed, this must be performed with a moderate, and in the case of witnesses of bad character, if there is no suspicion, insist on the respective norms, in particular, those that provide for criminal liability for false testimony or the refusal to give statements;

- the free discussion with the witness, by addressing some problems that are not related to the subject of the criminal trial, but are related to the witness's day-to-day activity, about his professional or personal activities. Such a conversation assures the adaptation of the witness to the role, the interrogations, but also to the person(s) and salt is going to convert.

The second stage of the hearing of the witness is represented by *the free narration*, it often starts with bringing the witness to the awareness of: the background of the incident, the facts and the circumstances of the deed, in connection with the fact that he was summoned as a witness, and inviting him to report everything it is known about the illegal act brought to the attention.

Free reporting has a certain advantage over statements obtained through interrogation, due to its spontaneity, the facts being reported in the way they were perceived and remembered by the witness. For this reason, the witness must be allowed to relate the perceived facts as he remembers them. Therefore, the free narration gives the witness the possibility to expose the facts, as they were perceived and stored in the memory. Situations are often encountered when the persons proposed to be witnesses for the parties, the accused, evade the free reporting of the facts or events known to them, preferring to be asked questions. In the given cases, I conclude that the testimony given by the witnesses proved to be bad, let alone liars. In addition to the above-mentioned advantages of free reporting, we can also mention others, such as:

- the possibility of directly observing the way of expression of the witness, allows the criminal investigation body to identify certain psychophysiological characteristics of the witness and his intellectual level;

- limiting any influence of the criminal investigation team on the content of the witness's statements, giving the witness the opportunity to relate the facts and circumstances recorded;

- the possibility of the criminal investigation team to observe the decision and the certainty that the witness wants to present the facts, the criminal investigation body is allowed to only value the witness's statements.

Among the key procedures applied during the hearing of the witness, which can positively influence the development and success of the free reporting, we can mention the following:

a. Creating a favourable atmosphere for the hearing. When the witness is raised, it must be answered with attention, with patience and with keeping the psalm, without interrupting it for no reason. The criminal investigation body can interrupt the witness, in situations when he deviates from the interview, having the right to report facts regarding the interview;

b. Analysing some sequences from the witness's accounts in order to highlight possible discrepancies or inconsistencies. The criminal investigation body can request the witness, in the context of important moments for the trial, to make certain predictions with reference to the veracity of the information presented;

c. Drawing attention to the behaviour of the witness. Countless times, practice has shown, that in times when witnesses relate the facts as they were perceived, they are sure of themselves. Even if the witness himself denigrates all the facts, at the time of the narration, we can observe less certainty in them, presenting the narrations in an impressive and convincing way;

d. Helping the witness encounters difficulties in expression. Situations are encountered when the witness, due to well-grounded reasons, his emotions, the level of intellectual development, the possibilities of his expression, it is difficult for him to reproduce and predict the events and facts he received related to the crime committed. In the given situation, the person examines the hearing of the witness, he can give him certain help expressed in different forms, such as: saying some words suitable for expression, reproducing the facts through drawings or charts, demonstrating through documents, photographs, audio or video recordings, etc.;

e. Fixing the most important sequences during the hearing. The judicial body will note its significant expectations, as well as possible contradictions or inaccuracies in the presentation, but without interrupting the witness, asking him to repeat a certain idea or to be more explicit.

In the third stage of interviewing the witnesses, called by some authors, the interrogation stage or the stage of guided interview, the person performs the hearing, intervenes with questions in order to clarify or predict certain expectations from the statements made by the witness at the stage of free reporting of the facts and the circumstances of the criminal act.

Asking questions to the witness appears in the following situations:

1. Being witnesses in good faith during the free reporting without intention, communicating suspicious, incomplete or divergent data.

2. In the case when the witnesses of the crime relate distorted information that does not correspond to reality. In the case of bona fide witnesses, the criminal prosecution body can ask the following types of questions:

- *Complementary questions*, in order to establish certain facts or factual circumstances that the witness, for unknown reasons, did not report;

- *Predicative questions*, which have the right to establish the circumstances of loss, time, and modality in this trial;

- *Verification questions*, which have the right to establish the sources of the witness's information or the sounding of the information.

In order for the hearing of bona fide witnesses by asking questions to be carried out positively, it is necessary that the questions addressed to the witness correspond to the following key requirements:

a. The questions must be addressed in such a way that they are clear, direct, succinctly formulated and in the order in which the free reports came out;

b. The questions must be addressed in a language that is understandable to the witness, especially when the subject of the hearing is related to an activity less known to him;

c. Through their content, formulation and addressing, the questions must not suggest answers;

d. Questions can be addressed with the presentation of various documents, samples, charts, photographs, audio or video recordings. For example, "This is the orientation photo of the road accident scene in the south, please predict the scene where the victim was buried?"

Particular problems arise during the questioning phase of re-habitation witnesses, of persons left in the first phase or during the course of the free reporting, they have demonstrated their insincerity or the tendency to distort the facts. Persons who testify falsely are held criminally liable, in accordance with the legislation in force, but since the priority concerns of the prosecuting bodies are related to the task given by establishing the truth, another solution is required, namely overcoming the irresponsible attitude of the witnesses, redness and obtaining truthful testimonies.

From the perspective of criminalistics, interviewing witnesses who are tempted to give false testimony involves, on the one hand, establishing the motives that lead the respective person to lie, and, on the other hand, examining the interview in such a way as to the assistant is determined to abandon the irresponsible attitude and objectively present the perceived facts.

Thus, there are four categories of factors that cause witnesses to lie or distort the truth, namely:

1) The material or moral interest in the outcome of the trial due to the relationship with the accused, the victim or another party in the process: kinship, good or bad neighbourhood, service or studies, rivalry, enmity, envy, etc.;

2) The feeling of shame inspired by the monstrosity of those involved in the process or due to the direct pressures from the interested persons (relatives, friends, colleagues, etc.). Often the witnesses or their family members are intimidated by various threats of revenge;

3) The feeling of inopportuneness of burdensome witness obligations, the tendency to avoid possible repeated shenanigans in front of the investigating body and in the district court;

4) The attitude of persons with criminal antecedents towards the criminal prosecution team, towards justice, determined by the previous relationships with them.

The data regarding the personality of the witness acquired until the interview process, combined with those obtained during the initial phases of the hearing, including the introductory and free reporting, offer the investigative body the possibility to reveal with certainty the true motives that lead the witnesses to testify perjury and to proceed to an in-depth interrogation.

In this way, the witnesses will be asked questions through which, directly or indirectly, they will be made aware that the investigating body knows the reasons that made them believe or distort the facts. This first step is often enough for witnesses to abandon their disingenuous position and testify truthfully.

Although, after the application of the aforementioned key procedure, the desired result was not obtained, the witness continuing to remain in the position of re-habitation, it is decided to proceed to the unmasking of the false witness of the depositions, this procedure implies the addressing in a well thought out order of to a series of questions regarding certain amounts of money or time, the mode of operation and the means used.

The witness can be given a description of the signals of the participating persons, of certain people and of the atmosphere at the scene of the crime. This procedure is justified, especially, when fabricated testimonies are given, or the witnesses presented by the accused, in order to confirm the perpetrator's alibi.

The reproduction of the judicial event constitutes a complex phenomenon that does not take place in a clean way, and in close connection with the thought processes, being possible only through representations. It must be emphasized that the representations are closely related to the individual characteristics of each person, and even in the same person the representations can be different, the visual ones are exact and stable compared to the auditory ones, which are unstable and inaccurate.

From the judicial practice, the rule emerged according to which the hearing of witnesses goes through three stages:

- identity verification and personal data consultation;
- free or spontaneous narration, listening to narration, rendering of facts or perceived circumstances;
- addressing questions from the judicial body and listening to the answers.

a) ***Identity verification and consultation regarding personal data*** - involves asking questions about personal data and listening to the answers received in relation to the solid ones.

I conclude that, the verification of the identity of the witness must also be carried out in situations where this is known, constituting a taking of the situation in a psychological sense, and for situations where there is a doubt about the identity of the witness, this can be established through any means of evidence, primarily on the basis of these is used to prove civil status in order to avoid the substitution of persons.

After establishing the identity of the witness, the law establishes the obligation of the judicial team to listen to the reports of the witness and the parties and whether he suffered any damage as a result of the breach. Some of these reports, the relationship of a spouse or close relative with the accused or the accused, with the injured party, the reports of enmity, friendship, etc., between the witness and the parties are known by the judicial bodies by virtue of their everyday activity or from the accounts of other witnesses.

The importance of meeting the expectations raised is useful to the judicial body both during the interview by using not only the questions, but also the key procedures appropriate to the situation, as well as in the evaluation and assessment of the probative force of the witnesses' statements.

b) ***Free or spontaneous reporting*** - starts by asking a general question, gives the witnesses the opportunity to reveal everything they know about the facts or circumstances they were asked to provide. For example: *Are you familiar with the traffic accident produced on the date of... in the event of?* Free reporting, especially when it concerns a large volume of information or data that carries a certain degree of complexity, does not mean a simple reproduction of the phenomena in the form in which they were perceived and memorized.

Reproduction is an active process of thinking, in which the memorized information is subject to modifications. The hearing in the form of free narration can take place favourably on the testimony of the witness when the exposition is made in the order in which the facts of the case were perceived, showing certainty and speed in their evoking, or, on the contrary, it is unfavourable when the story of the witness is sketchy, compressed after another version, although in salt, the perception of the judicial event was realized. There are numerous situations in salt where the witnesses, in their free narration, highlight matters unknown to the judicial body until that moment, with importance for the salt, or elements that show other acts committed by the salt and those buried in the salt in the salt are interviewed.

During the free reporting, the judicial body has the possibility of listening to the witness from the way in which he made the exposure of his perceptions, the security and the salt presents the facts and circumstances, the hesitations, the errors, the returns on some expectations from the statements made, presumably also from the robustness of the arguments presented. The statements made by the judicial team during the free reporting constitute the premise of using the initial interview plan, and in some situations, it is necessary to adapt the assessment to the witness's offer for the questioning stage.

c) ***Addressing questions from the judicial team and answering the questions*** – This stage is optional, unlike the first two steps, they are mandatory. The interview strategy at this stage is established taking into account the position of the interviewed witnesses. In the case of witnesses of good faith, in the context of free reporting, they have had omissions or insufficiently clarified problems, they are addressed to predict and verify questions on the edge of this expectation. The purpose of this is to help the witnesses to remember the details

necessary for the complete clarification of the circumstances regarding the salt they are being interviewed.

The questions may be those provided for in the initially prepared plan, or they may have improved it following the consultation of free reporting. Obtaining answers to complete the free reporting is conditioned by the way of communication between the witness and the judicial body, the message the question contains, the way it is understood, the language used must not exceed the level of education or skill of the to the witness.

The questions must be designed and refer to specific expectations, and when it is aimed at predicting a large number of circumstances, it is not advisable to ask all of them in one question, and it is recommended to address separate questions for filing the expectations must be clarified.

The questions must be addressed in a certain succession, imposed by the scope and nature of the circumstances to be completed and predicted. The question file should flow naturally from the previous one, so that the addressing of a question is prepared by the one who presided over it, to allow the successive prediction of the circumstances that remained unclear after the free exposure.

The main advantages of the guided interview are:

- it eliminates the confusions and contradictions that the witnesses have made in their free reporting and the conclusions can be established accordingly;
- it gives the possibility to the interviewer to help the witnesses to remember some forgotten circumstances;
- eliminates the possibility of witnesses to deviate from the circumstances of interest to the court or to dwell on insignificant issues, ignoring the essential ones;
- it constitutes an important means for obtaining data necessary to know the personality of the witnesses, presumably and the feelings they have towards the act and the perpetrator;
- It constitutes the basic method in the communication of recidivism witnesses who want to hear, in a deliberate manner, certain known circumstances.

The hearing of different categories of witnesses, requires and approach, the acceptance of the existence of some particularities in the sea concerns the professional approach depending on the way of perceiving the point of interest for the survey, of age, of sum and the soundness of the Romanian language, etc.

Hearing eyewitnesses represents testimony based on visual sensations and is more frequent because the human eye accepts a greater amount of information. From the witnesses present at the unfolding of the events, the facts about the facts are intended to be submitted, the most complete and truthful statements can be obtained. The source of the unmediated testimony is the immediate, original perception of the facts and factual circumstances related to the offense or the perpetrator, in addition to such data, information and knowledge acquired by the witness through his own sense organs.

In the case of *live witnesses*, the judicial team must take into account the conditions of perception, the substance of this and the phenomenon of illusion, the age and profession of the witness, presumably also objective or subjective factors that can constitute sources of testimony distortion. The multitude of objective and subjective factors that can influence the statements of the witnesses must cause the criminal investigation body to show caution in the context of this group of witnesses.

During the interview, it is recommended to insist on the highlighting of all the revelations related to the soundings of the facts, they lost the facts and the actual circumstances,

for the trial they are requested to submit their witnesses, this highlights the role of attention, a psychological phenomenon inextricably linked to perception, without this the testimony is unbelievable. In the testimony, the voluntary and the involuntary attention must be found, presumably their distribution on the judicial event and the preoccupations of the witness at the time of producing the testimony.

Live testimony presupposes, on the one hand, the presence in the context of the production of facts, of appropriate stimuli (visual, auditory), and on the other hand, the real possibility of unmediated perception of these stimuli. Therefore, the direct perception of the stimuli is accompanied by the implied, usually the presence of the witness during and after the production of the acts, added in such temporal and spatial limits to ensure the proper perception of the visual, auditory etc. stimuli.

By *interviewing the eyewitnesses*, the main episodes or the adjacent ones of the unfolding of the facts, events or actual circumstances are reconstructed based on what they perceived, in particular, of the spatial or temporal relations. In the case of a traffic accident, witnesses notice this fact following the noise produced or following the cry of the injured person.

In such a situation, the judicial team will have to establish whether the eyewitnesses perceived the circumstances in which the traffic accident occurred or only the consequences, especially the actions of the driver of the car and of the victim after the road accident occurred. In their reports, they tend to fill in the statements with personal opinions or solutions, regarding what happened until the moment they became aware of the accident.

In certain cases, the attention itself can replace the ordinary judicial probation, specific to the infractions committed by mistake, in the case the accused or the accused did not take the necessary diligence to prevent the judicial event. The judicial team verifies, during the hearing of the live witness, the stability of the attention, the perception of the stars in relation to the astronomical time, the atmospheric soundings, the physical and mental state of the witness, the emotional feelings accompanied the perception, presumably and others many things can influence the accounts of the bone witness .

I appreciate that, in response to the bone witnesses, it is reordered for the hearing to take place in front of the court. Eyewitnesses have the possibility to perceive the particularities or characteristics of the perpetrators and based on what they keep in their memory, they can contribute to their identification.

Summing up, I emphasize that the witnesses can be presented with evidence that demonstrates with certainty that the events, facts and circumstances that constitute the subject of the hearing are completely or partially of a different nature than they were exposed. Even if the witness, together with the presentation of the evidence, will be firmly reminded of his obligation to tell the truth, but also of the criminal responsibility for continuing to support the lie, this simple procedure will in many cases decisively influence his subsequent behaviour.

Means of recording witness statements

According to the procedural-penal provisions, the statements of the witnesses are recorded. The interview-verbal process, as a means of proof, must capture, in a certain form and sequence, the statements made by the interviewed person.

Art. 194 and art. 195 of the NCPP, in turn, contain very general provisions regarding the manner of recording the criminal investigation. Only art. 195 para. (2) of the NCPP provides that, to the verbal process, the sheets, photographs, films, audio and video cassettes, casts and prints of traces made in the course of the criminal prosecution shall be attached.

There is no clear indication regarding the obligation of the video recording of the criminal investigation to the detriment of the obvious usefulness of the assessment and the substitutable place. As a rule, video recordings with modern equipment, even at the amateur level, assume the function of audio recording, and video images can be converted into photographs of satisfactory resolutions, while semi-professional and professional equipment, used intelligently, can provide a very wide range of benefits. for carrying out the criminal investigation. Consequently, we cannot have any prediction regarding the disposition of video recordings of the criminal prosecution, which would possibly consist of the testimony of the witness heard in the manner described in art. 129 of the NCPP.

According to the criminal-procedural legislation in force, the verbal process of hearing the witnesses must include three parts: introductory, descriptive and final or concluding.

➤ *The introductory part of the verbal process* must contain:

a. Details of the criminal investigation team (function, name, first name), in front of which the witness was summoned to testify, the location, the date of the interview of the witness.

b. The witness's answers to the questions specified in the standard form regarding the name, surname, date and year of birth, address, telephone number, marital status, education and social sphere in fact constitutes the witness.

c. Mentions with reference to the participation or not of the interpreter, in the cases when the interviewees do not possess the state language, although in the framework of the criminal investigation, photography, filming, audio recording, interception of telephone conversations and other actions necessary for the investigation of the crime were ordered.

➤ *The descriptive part of the verbal process* is considered the mirror of the entire interview process, and this is how the statements of the witnesses are recorded in the order in which they were submitted during the free reporting phase and the interrogation. The statements are recorded in the verbal process by the criminal investigation team, and then the witness agrees with the words written and confirms this fact with the phrase: *the verbal process is written from my words, I write for myself and I sign* . There are also situations when the witness records the statements personally, but first of all he must present them verbally in front of the criminal investigation body.

The statements are fixed in the first person, in logical order and in the witness's own language, the terminology used by the witness will be preserved in its entirety, eliminating only those expressions that are indecent.

In situations when the witnesses are heard repeatedly, the descriptive part of the verbal process will undergo many changes and will differ from the previous statements, because additional explanations will be given on some details that were omitted at the first hearing. Although the repeated interview will take place in the form of a confrontation, the descriptive part will be drawn up in two columns, one for the witness. This will be presented in the form of questions and answers, and each answer file will be signed by the witness.

➤ The final part of the verbal process captures the start and end time of the interview of the witness, the additions and objections addressed by the interviewees, presumably and the fact that the verbal process was brought to the witness's attention through the hearing. During the interview of the minor witnesses, the verbal process will be given to the person participating in the interview (parent, teacher or psychologist). The verbal process is signed by the witness on a separate page and some answers to the questions addressed to the witness by the criminal investigation team.

Changes by adding or deleting text are not allowed in the verbal process, and although they cannot be avoided, they are certified by the signatures of the witnesses. The remaining free spaces are crossed out by lines, to avoid the possibility of modifying the content of the verbal process.

Another method of recording witness statements is audio or video recording, photographs and other forms of information carriers. These being made available to the criminal investigation bodies some time ago, sound recording devices (Dictaphones, tape recorders) and video-sound (video cameras), they have found a wide application in the narrow spheres of criminal activity.

The phonogram and the video phonogram constitute a technical means of recording the testimony of witnesses, especially in the judicial system, it resurfaces quite often, especially in situations where the aim is to retain the entire testimony and the expressions used by the witness and due to the advantages that the testimony presents, namely:

- a. Ensures, under all expectations, full objectivity and fidelity in recording statements, questions and answers;
- b. They have become indispensable in the assistance imposed by some borderline circumstances, especially of the clothes in serious condition, presumably also of orphans, of disabled persons and of those who do not notice the presence of an interpreter;
- c. I give the possibility to the organ performing the hearing to carefully analyse the statements of the interviewee, to surprise and exasperate his expressions, hesitations, much to appreciate the sincerity of the witness;
- d. It ensures the correctness and continuity of the interview, the organ performs the hearing without being obliged to take notes, interrupt the person being heard, and pass on the questions and answers.

The primary utility of recording statements in this way is to print all the statements made during the interview.

The use of audio and videophones in the hearing of the witnesses, who have suffered as a result of the infraction, is important and due to the fact that it guarantees the stability of the statements of the assessors.

At the end of the interview of the witness, it is necessary to bring to his attention that the statement will be recorded on the tape in its entirety. The recording begins with the indication of the date and location of the registration, the name and title of the criminal investigation body and the persons participating in the interview, after the interview, the interview follows its natural course (identification of the witness, taking the oath, presentation of the evidence, report open air, questions and answers)

When the recording of the hearing of the witness ended, the organ recorded the interview, indicating through the recording the time of the start and completion, the type of technical printing medium and the main technical parameters of the assessment, in the same way the whole tape is listened to, after the jump the witness shows, by printing the will, of course the recorded ones correspond to the ones he unfolded.

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