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TOADER ADRIAN TIBERIU

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SUMMARY

THE PARTICULARITIES OF QUESTIONING WITHIN THE JUDICIAL INVESTIGATIONS

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Content

The Romanian State exercises its attributes concerning the protection of the rule of law, the fundamental rights and freedoms of the citizen, the public and private property and also the attributes concerning the prevention or discovery of criminal acts through its specialized public services, which operate exclusively by the law. The activity of crime investigation constitutes the exclusive field of the specialized bodies of the state which have been empowered for this purpose by the State authority and involves the carrying out of the necessary judicial activities for the criminal cases. Therefore, in order to combat the criminal phenomenon, the judicial activity of criminal research is strictly regulated by law and involves the collection and exploitation of information as well as the administration of evidence for the purpose of finding out the truth and holding criminally accountable those who are guilty of committing crimes. In the Romanian judicial system, the administration of evidence in a criminal case is done by the prosecution bodies which include prosecutors, criminal investigation bodies of the judicial police and special criminal investigation bodies.

The prosecutors, who stand for the Public Ministry, are constituted in offices which operate within the courts of the competent territorial district. Concerning their duties, the prosecutors carry out criminal prosecutions regarding the offences provided for by law and conduct the criminal investigation of judicial police and special criminal investigation bodies in the case of offences within their competence.

The criminal investigation bodies of the judicial police, officers and agents of the Ministry of Internal Affairs, carry out their work according to the material competence established by law, under the direction and supervision of the prosecutors within the public prosecutor's offices of the courts who have the competence of conducting the criminal case at first instance. They acomplish their

duties according to the specialisation of the structures to which they have been asigned, and under the coordination of the case prosecutor, they conduct activities of estabilishing the criminal-related facts, identification and detection of perpetrators, gathering the data and indications necessary to initiate the criminal prosecution, as well as administering all the means of evidence necessary to solve the case.

One of the evidentiary procedures by which facts or circumstances can be established, which may lead to the finding of the truth is judicial questioning, which, in the context of its corroboration with other means of probation, can contribute greatly to the determination of the criminal liability of the persons under investigation. Within the judicial practice, the literature and the the criminal trial legislation in Romania, the procedural activity by which the prosecution bodies obtain information from the parties, from main trial subjects or other trial subjects is called hearing, listening, investigation or judicial questioning.

Questions of judicial questioning in the context of criminal investigations and of the administration of evidence in criminal cases are topical issues, which are the focus of associations and organizations involved in the promotion and protection of human rights. The approach of these topics at the scientific and theoretical level has been carried out over time by various researchers, theoreticians and practitioners, from our country and abroad, through the publication of studies, articles or specialized monographs.

The area of judicial questioning in the context of crime investigation is the subject of the study of criminal court proceedings, forensic tactics and methodology, as well as interdisciplinary analysis in the sphere of public order and national security. As for the applicability of the judicial inquiry in the field of investigating particular forms of crime, the main rigors, demands, steps to be taken,

obstacles and difficulties of the investigation are reflected in the specialized doctrine. At the same time, the legal rules on the requirements of the staff of the judicial bodies involved in activities in the field of judicial questioning are contained in both national law and in the texts of conventions and international normative documents. The Code of Criminal procedure, passed by Law No 135/2010 and come into force on 1 February 2014, met the requirements of current society and the requirements imposed by the judicial proceedings under the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as those provided for by the case law of the European Court of Human Rights. In order to identify the appropriate practical arrangements for implementing the legal provisions, the paper aimed to thoroughly research the elements of the legislation, analyzing the practices used by the professionals in the field, and the research and the analysis of the bibliographical sources in the field. However, the study involved not only deepening knowledge of criminal procedural law, but also knowledge of forensics and judicial psychology. Therefore, the proposed theme does not address, in particular and individually, judicial questioning from the point of view of compliance with the legislation in force, but studies it in full harmony with the tactical and methodological forensic rules as well as in accordance with the psychological methods applicable to this evidentiary process.

The originality of this thesis arises from the objectives and directions of the scientific research which were based on documentary study, empirical research of the field, and as a result of the experience gained as a judicial police officer. In contrast to the approach of the judicial questioning in the studies of different authors, the scientific approach proposed a practical perspective on this evidentiary process by identifying the main obstacles and difficulties that may arise during it.

Also, based on the findings of the European Court in some cases, the following paper has criticized the attitude of the law enforcement staff due to the existence of isolated cases of non-compliance with the rights of the persons who are under investigation in criminal cases as a result of their hearing.

Starting from the working hypothesis (the particularities of the interrogatory in the context of the investigation of criminialty), the main purpose of the scientific research was to analyze and investigate the requirements and realities in which the trial subjects were heard by the judicial bodies during the criminal trial. The professional experience I gained during the activities carried out within the criminal investigation structures at the level of I.G.P.R. was of particular importance in choosing the subject of the present doctorate thesis. On the other hand, the fact that i am currently conducting teaching activities concerning criminal investigations within The faculty of Police- Police Academy „Alexandru Ioan Cuza", has helped me to transpose the experience gained as a judicial police officer into a scientific research.

The Judicial interrogatory, as the topic chosen for this study, is a topical subject, being in the attention of practitioners in the judicial system and some theoretical researchers from the country and abroad. The study is based on an analysis of the relevant legislation and the literature, having studied, within the scientific research, numerous specialized papers, national normative acts which are in force alongside a few documents and directives passed at a European standard. The immersion of the field was achieved by stuying the work of some well-known authors, both romanians and foreigners, who had concerns regarding the domain of research through treaties, studies, articles, doctorate thesis or books.

On the methodology throughout the research process, I have sought to combine theoretical and practical aspects so that scientific research would provide

a clear picture, a logical sequence and a continuity aspect with regard to the issues being debated. As research methods, I initially proceeded to examine the legislation governing the field of hearing persons in criminal proceedings, which is the main source and the starting point for this investigation. But, undoubtedly, secondary sources, such as monographs, treaties, studies or scientific articles, have also played an important role in the drafting of the current work, providing it with a solid theoretical basis.

The methods of scientific research were chosen by consulting both the reference work of the prestigious professor Chelcea Septimiu, „The Methodology of the development of a scientific paper" , as well as the work „Scientific research in education and education. Questions with and without immediate answers", of professor Enachescu Eugenia.

The practical experience gained during my ten years as a judicial police officer showed me that only when a practitioner gets to know, understand and acquire his literature, he can aspire to a position that allows him to understand a problem in depth. By studying and debating the legislation in the field, by invoking the opinions expressed by established theorists or by obtaining points of view issued by the practitioners of the judicial system, I have tried to identify the most appropriate practices for carrying out the evidentiary process at issue.

In order to achieve the proposed objectives, I have structured the scientific approach in several stages, these being represented by the four theoretical chapters, followed by the presentation of the sociological study and the experiment carried out, the research being completed with the part of conclusions and proposals.

The first chapter of the paper, the general framework of the hearing of the categories of trial subjects in the criminal trial, is dedicated to the theoretical

classification of the judicial interrogation at Romanian and European legislation standards, as well as to the literature standard.Throughout the scientific approach i have carried out, during the first chapter, I took into consideration the means of hearing the subjects of the criminal trial by the judicial prosecution bodies, which were analysed according to the provisions of both the Code of Criminal Procedure and the Literature. Thus, the legal provisions have been interpreted in order to identify the most rigorous practical arrangements, which must be used during the hearing and which are fully in line with the legislation in force. As a result, the techniques of administering the evidentiary process used by both the judicial bodies and the prosecutors were analysed.

During this chapter, the importance of knowing the special legislation has been discussed, due to the numerous procedural errors committed by practitioners and exceptions raised by lawyers during the preliminary chamber or the trial of the merits of the case, exceptions which may lead to absolute or relative nullities and which may contribute to the acquittal of a defendant in respect of whom there are conclusive evidence as to the commission of the offence. Therefore, procedural particularities of judicial questioning have been called into question, such as compulsory legal assistance, the right not to give any statement, the privilege against self-incrimination, all of which are fundamental guarantees of the persons heard, the infringement leading to the applicability of the provisions of Article 102 of Criminal Procedure Code, according to which the evidence obtained unlawfully cannot be used in criminal proceedings.

The first chapter has been dealt with in a theoretical and practical manner, and the conclusions and recommendations presented are as a result of the in-depth study on this subject. Therefore, the achievement of theoretical objectives was based on the study of national and european legislation and literature. At the same

time, where appropriate, judicial practice was consulted to provide concrete solutions for the implementation of practical mechanisms for the administration of evidence.

In order to immerse the in force legislation regarding the hearing of the trial suspects, I have studied the Code of criminal procedure from the perspective of the authors Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chiș, Mirela Gorunescu, Costică Păun, Maxim Dobrinoiu, Norel Neagu și Mircea Constantin Sinescu.

On the issue of respect for human rights during judicial investigations, a subject of major interest with implications for the formation and maintenance of the credibility of law enforcement institutions, I have studied the European Convention for the Protection of Human Rights and Fundamental Freedoms. I have also studied the Directive 2012/13/EU of the European Parliament of 22.05.2012, which requiers the compulsion of the participating states to inform the suspects or accused persons regarding the rights they have, the right to silence being regulated withing the art.3, paragraph 1, letter E. In order to identify the requirements of the right to interpretation and translation in judicial proceedings, I have studied Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

As a specialized bibliography, I mainly used the work of the author Mihail Udroiu „Criminal Procedure, General Part", reference material regarding the approach of hearing persons from a theoretical point of view.

Specialist works, which i greatly took into consideration and in which the evidentiary process of the hearing is treated in theory, belong to the author Grigore Theodoru, „Treaty of Criminal Trial Law" and to the authors Ion Neagu and Mircea

Damaschin, „Treaty of Criminal Procedure, General Part", providing those interested with valuable tools in deepening the issue at cause.

Particular attention was paid to the work entitled „Presumption of Innocence" written by the author Voicu Pușcașu, as well as to the study carried out by the same author, entitled, „Critical Aspects on the Regulation of the Right to Silence and Non-Self-Incrimination in romanian Criminal Procedure", with Comparative Law References, published in the Journal Annals of the Western University of Timisoara-Right Series, works in which the right to silence and the privilege of self-incrimination is debated.

With regard to the investigation of the concept of respect for the right to silence of the perpetrator and the privilege against self-incrimination from a perspective of its historical evolution, I used as a source the work of author Ioan Tanoviceanu, „Treaty of Law and Criminal Procedure" (pioneered in the field).

For the investigation of certain particularities concerning the hearing of witnesses, I used as a source of documentation, the article of author Nadia Zlate, „Hearing Witnesses", published in the journal Pro Law no. 2/2018, in which it set out considerations with regard to Decision 562/2017 of the Constitutional Court of Romania, concerning the possibility of exercising a person's refusal to be heard as a witness.

The second chapter of the paper, entitled „The Tactic of the Organisation and Conduction of Interrogation", is dedicated to the general and special rules on the organisation and conduction of judicial questioning.

In the scientific approach taken during the second chapter, the benefits of holding hearings at the premises of police units were highlighted, as well as the

difficulties that may arise when the investigator chooses to travel to a foreign location for a hearing.

In addition to the general procedural rules established by the criminal procedural legislation for the hearing of persons, discussed in the previous chapter, the special rules to be applied during the hearings were also discussed. Therefore, the rules according to which the hearing can be interrupted if the interrogated person shows visible signs of excessive fatigue and can no longer report the facts and circumstances subject to the hearing, have been highlighted. Furthermore, there has also been highlighted the situation when the person subjected to the hearing shows symptoms of a disease and can no longer participate in the ongoing procedural activity.

There have been highlighted the benefits of conducting the hearings within specially designed rooms which increase the chance of getting positive results following the hearings. As a result, giving up the classic and standard style of hearing and creating a discret enviorment may facilitate the communication between the interlocutors, which is very important as part of the process of gathering information in solving the truth.

In the same way, we focused our attention on how to organize such rooms, their arrangement can have a psychological impact on the person being questioned and an important role in creating a prolific ambience for the development of a free dialogue.

Throughout this chapter, the technical drafting of the declarations was also analysed, making it an antithesis between the classical and electronic handwritten records.

At the end of the chapter, the proceedings for the hearing of a person against whom a prison sentence or other custodial measure was imposed were debated. The specific features of hearing a person who is not at large have been highlighted, which involves both additional procedural factors and atypical psychological factors, which make this procedure particularly complex.

The second chapter was dealt with from a theoretical and practical perspective, and the conclusions and recommendations submitted were as a result of the in-depth study on the topics under discussion. Therefore, the achievement of practical objectives was based on the study of in force legislation and literature. At the same time, where appropriate, specialists from judicial practice were consulted in order to obtain their opinion on the issues raised.

Specialist work, to which I have paid attention and in which the hearing of persons is approached from a theoretical point of view, belong to the author Mihail Udroiu, „Criminal procedure. General part. ” and authors Ion Neagu and Mircea Damaschin, „Treaty of Criminal Procedure.General Part”, providing those interested with important tools in deepening the issues under discussion.

Regarding the issue of the prosecution of a person against whom a custodial sentence or other custodial measure has been imposed, Law 254/2013 on the execution of sentences and custodial measures ordered by judicial bodies during the criminal trial was studied.

As a specialized bibliography, I mainly used the work of author Emilian Stancu, „Treaty of Forensics”, reference material regarding the approach of the hearing of persons from a tactical point of view.

With regard to the analysis and identification of the most appropriate tactical and organizational rules used in the conduct of a judicial interrogation, I

used, as sources, the work of authors Gabriel Ion Olteanu and Marin Ruiu, „Criminalistic Tactics", as well as the work of authors Gabriel Ion Olteanu, Costică Voicu, Costică Păun, Constantin Pletea, Elena Lazar, „The interrogation of the persons within the judicial investigation".

At the same time, I paid particular attention to the work of the author Tudorel Butoi, „Judicial Psychology" , University Course, and the work of authors Tudorel Butoi, Grigore Stolojescu, Cristian-Eduard Ştefan, „Behavioral Analysis in criminal proceedings", University Compendium, works that deal with the hearing from the perspective of judicial psychology.

In the third chapter of the paper, entitled „Organizing and conducting judicial questioning from the technical and applied perspective of specific procedures of judicial practice", topics such as the structure of judicial questioning in terms of its conduct, investigative techniques used by judicial bodies, deontological rules characteristic of an investigator and particular situations of judicial interrogation have been discussed.

With regard to the structure of judicial questioning, the stages which form the procedure and the importance of their observance have been called into question. The preparatory stages of the activity itself were highlighted, consisting of studying the prosecution file, drawing up the questioning plan and determining where the hearing will take place. At the same time, the stages during the interrogation were highlighted, which were the identification of the person, the preliminary discussion, the hearing itself and the completion of the hearing.

During the chapter, the investigative techniques used by the romanian judicial bodies, as well as the most well-known methods of hearing, used by investigators around the world, have been presented. Therefore, in order to carry

out the scientific approach, information, statistics and practical arrangements were called upon, not only in the field of criminal process, but also in the psychological or sociological field.

In addition to the procedural errors that may be committed by the investigating bodies, the offences which may be committed by them during a hearing, such as abusive research or torture, have also been discussed, and concrete cases existing in judicial practice concerning the consumption of such acts have also been presented. Abusive techniques used by law enforcement institutions during judicial interrogations may lead to statements made in violation of freedom of expression or flawed information that may distort reality. Thus, I intended to raise the alarm about the numerous cases in our judicial system and the repercussions that are going against each individual, the State and the Ministry of Internal Affairs, whose image is being damaged, which can hardly be removed. In this respect, I have invoked the provisions of the European Convention on Human Rights and presented several judgments of the European Court referring to abusive manifestations during judicial questioning.

Along this chapter there have been presented the difficulties an investigator may bump into during the hearing of the injured party or the witnesses if they provide false statements. On this occasion it was debated the necessity of special attention on investigator's account in order to detect the trial subjects who willingly transmit false information during the hearings, which may lead to the the hardening of the process of justice.

Considering the complexity of this topic and the relevant debates within the literature and the judicial practice, I decided to give space to the tactics of hearing a witness and to call into question the psychological processes underlying the formation of his testimony.

The approach of the third chapter was carried out from a theoretical and practical point of view, and the conclusions and recommendations presented resulted from the in-depth study on the issues under discussion. Therefore, the achievement of the objectives was based on the study of the in force legislation, the literature and last but not least, on the opinions and recommendations made by specialists in judicial practice.

With regard to the analysis and identification of the most appropriate tactical and organizational rules used in the deployment of judicial interrogation, I used as sources, the work „*Treaty of Forensics*" and the work „*Tactical Procedures used in criminal investigations. Evolutions*", both written by the author Emilian Stancu.

Another specialized work, I have greatly taken into consideration, is „Forensic Tactics", written by authors Gabriel Ion Olteanu and Marin Ruiu, which offer those interested the most appropriate tactical and organizational rules used to conduct a judicial interrogation.

In order to deepen the in force legislation concerning the hearing of related crimes which may occur, I have studied the work „*Criminal Law, The Special Part*", belonging to the author Mihail Udroiu, alongside the „The approached new criminal code, The special Part", from the point of view of the authors Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chiș, Mirela Gorunescu, Costică Păun, Maxim Dobrinoiu, Norel Neagu și Mircea Constantin Sinescu.

For the presentation of investigative techniques used by judicial bodies in Romania, I studied the work of author Tudorel Butoi, „Judicial Psychology", University Course, as well as the work of authors Tudorel Butoi, Grigore Stolojescu, Cristian-Eduard Ştefan, „Behavioral Analysis in Criminal Trial,

University Compendium". To highlight the main investigative techniques used by judicial bodies in other states, online bibliographical sources have been mainly used.

In the fourth chapter of the paper, entitled „Interpretation of nonverbal behavior", the problem of body language, a form of non-verbal physical and mental communication of man has been approached.

On this subject, I consider the fact that film productions or beletristic material that has emerged in the United States of America, as sources for the modalities of judicial questioning, in which the investigator is a human detector of lies, constitute a distorted representation of this field, and there are practitioners who are tempted to give credence to such methods. As an interesting topic for the public, the Romanian press has recently also given an important space to this subject, in the form of addressing topics such as the detection of lies, the secrets of nonverbal communication or complex manipulation techniques. Building on this trend, specialists from all over the world organize courses and seminars on the subject, trying to help people who want to decrypt nonverbal behaviors that betray the lie, these techniques being applied, both in the area of domestic relations and in society.

In view of the above, I decided to deal with this subject during Chapter Four, trying to use a realistic approach to using nonverbal cues for the detection of lies, based on those studied, experienced and written by specialists in the field, psychologists or famous authors. Therefore, following the deepening of the problem in the field, what I will expose during the chapter will be a corollary of the reactions, expressions or basic gestures of nonverbal communication which any investigator can normally identify and exploit during a judicial interrogation or other procedural activity

Chapter four has been approached from a practical perspective, and the assessments and conclusions submitted arose as a result of the in-depth study on the issues under discussion, by analysing the literature and exploiting online information.

As a specialized bibliography, I mainly used the work „Secrets of Nonverbal Communication", belonging to author Joe NAVARO, former FBI agent and expert in nonverbal communication and body language.

Reference material, in terms of the interpretation of nonverbal language, is the work „Face Emotions", by the author Paul Ekman, psychology professor at the University of San Francisco and specialist in the field of expression of emotions and lies.

With regard to the research of the field of nonverbal communication, from a perspective of its historical evolution, I used as a source, the doctoral thesis of the author George Vișu-Petra, entitled „Detection of simulated behavior", held at the Babeş-Bolyai University, Faculty of Psychology and Science of Education. Other specialized works, which I took into consideration and in which the topic of interpretation of nonverbal behavior is addressed, belong to the author Allan Pece, „Body Language" and author Richard Webster, „Body Language".

In order to deepen the research, we carried out a sociological study, with the object of judicial questioning, having attacked several issues which in judicial practice raise questions or provoke debates, being used as working methods to complete questionnaires, discussions and interviews. I consider the results obtained from the systematization and foundation of the sociological study that I have carried out and whose results I have presented during the scientific research are valuable

information, which come from practitioners in the judicial system, and can be harnessed by anyone interested in the field.

At the same time, in order to verify some hypotheses formulated during the paper concerning psychological processes, which are the basis for the formation of a witness's testimony, I used, as a method of scientific research, the experiment, being carried out an exercise of attention among students.

At the end of the scientific research, following the detailed analysis of the legal provisions, as well as the examination of the evidentiary procedures used by the judicial bodies in Romania, to ensure the most efficient procedures, based on the facts found, several proposals have been formulated to improve the dysfunctions found and some recommendations in order to improve the performance obtained from judicial interrogations. At the same time, the best practices used by the investigators during the hearing of the trial subjects were highlighted, giving interested persons the opportunity to improve the performance of the evidentiary process at issue.

The reference theme may also be a best practice guide for specialist workers, in the context of the lack of uniform application of relevant legislation at national level. The field of judicial questioning represents a real challenge for practitioners in the romanian judicial system, there is so far no uniform practice at the level of criminal investigation structures on the territory of our country, the implementation of criminal procedural rules, such as the way of listening, the communication of rights and obligations and last but not least the recording of statements. Thus, the outcome of this scientific research may fall within the sphere of concern of practitioners in the judicial system, having as main beneficiaries police bodies, magistrates, as well as those preparing to embrace these professions involving the exercise of State authority.

In the hope that the quality of this scientific research is high, I wish it would be studied by both the theorists of profile and by the current and future practitioners of the romanian judicial system, and those discussed would be of real use to them.