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ADMINISTRATION OF EVIDENCE IN THE TRIAL PHASE OF A CRIMINAL CASE

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Abstract: *By virtue of the principle of immediacy, the purpose of the judicial investigation consists in the direct and immediate administration of evidence previously obtained during the criminal investigation phase. This mode of administration gives the court the opportunity to perceive the evidence directly, a fundamental aspect for forming its own conviction on the factual situation and, implicitly, for adopting a sound solution.*
Key words: *criminal trial, evidence, judicial investigation*

Introduction

Depending on the specifics of the case brought to trial, the evidentiary framework may be expanded by administering new means of evidence, either at the request of the parties or the injured person, or ex officio, at the initiative of the court. This evidence is also administered directly by the court, using the same procedural means as during the criminal investigation phase. However, the judicial investigation is fundamentally different from the criminal investigation phase in the conditions for conducting evidentiary activity.

Thus, the evidence is administered directly before the court, each participant having the opportunity to formulate objections and combat the claims of the others. Therefore, the re-administration of evidence obtained during the criminal investigation does not constitute a simple formal resumption of it, but implies a new direct perception by the court, under the specific conditions of the trial. Even if the court has the

responsibility to lead and supervise the conduct of the judicial investigation, it no longer has an active role in the administration of evidence, the task of proposing it falling mainly to the prosecutor, the parties and the injured person (Crișu, 2024, p.202).

The court has, however, the possibility – without being obliged – to order ex officio the administration of certain evidence, in a subsidiary manner, to the extent that it considers that the evidence already administered is not sufficient to form its conviction on the case. Although the legislator sought to establish a more arbitral role for the court, the procedural rules still allow for the exercise of a control of legality and relevance over the evidence, since its admissibility is subject to the censorship of the court, which has the power to admit or reject it by a reasoned decision, in accordance with the provisions of art. 100 para. (3) of the Code of Criminal Procedure.

Beginning of the judicial investigation

The judicial investigation usually begins with the re-administration of evidence from the criminal investigation phase, but the court is obliged to do so only with regard to that evidence that it considers to be pertinent, conclusive and useful. In any case, the court cannot base its decision on the statements of persons who were not re-examined before it. The parties and the injured party may request the re-administration of evidence excluded in the preliminary chamber, as well as that rejected by the criminal investigation bodies, but also the proposal of new evidence, regardless of whether it was formulated for the first time during the trial phase.

The judicial investigation is considered to have begun implicitly by carrying out the first investigative act, which usually consists of hearing the defendant (Zarafiu, 2015, p.426) without excluding the possibility that it may begin through another procedural act. This procedural moment marks the limit up to which the injured person can become a civil party in the criminal trial, and if he or she does not have the capacity to exercise or has limited capacity, the prosecutor can exercise the civil action on his or her behalf. Also until the beginning of

the judicial investigation, exceptions regarding the material and personal incompetence of the court may be invoked, in situations in which a hierarchically superior court to the competent one has been notified.

Evidence administered during the criminal investigation phase, which is not contested by the parties, will not be re-administered during the judicial investigation. These will be subject to adversarial debate in the presence of the parties, the injured party and the prosecutor, and may be taken into account by the court at the time of deliberation. Evidence is considered uncontested if its content, resulting from its administration during the criminal investigation phase, is accepted by the party, including in the event that it is unfavorable. Acceptance of evidence does not, however, limit the party's right to propose other means of evidence in its defense.

In the event that the content of evidence is contested, the court is obliged to re-administer it during the judicial investigation, unless it considers, with good reason, that the respective evidence is not pertinent, conclusive or useful for resolving the case. In such a case, the court will not be able to base its decision on that evidence previously administered during the criminal investigation phase, but not administered before the panel of judges.

Thus, in the event that, during the criminal investigation, twenty eyewitnesses were heard, the court may consider that, after hearing ten of them, additional re-hearings are no longer necessary. However, the court will not be able to refer, in the reasoning of the decision, to the statements of those who were not heard directly during the trial phase.

The case law has correctly shown that the mere challenge to the evidence administered by the parties is not sufficient for the admission of the request, the court's assessment being mandatory that this step is necessary to fulfill the purpose of the evidence, as defined in Article 98, Criminal Procedure Code (Bucharest Court, Criminal Section, Conclusion of 23.04.2014, in Neagu, Damaschin, & Iugan, 2023, p. 158).

Hearing of the defendant

The hearing of the defendant during the judicial investigation is preceded by the establishment of his identity, in accordance with the provisions of art. 378 para. (1) of the Code of Criminal Procedure. Subsequently, the defendant is given the opportunity to make a free statement on the facts and circumstances relevant to the case, as they are perceived and assumed from the perspective of his own defense. This stage cannot be substituted by a simple question regarding the maintenance of the statements previously given during the criminal investigation phase, since the defendant's statement represents an essential means of defense and an important element in the process of forming the court's conviction.

Only after the completion of this free statement, the defendant may be subjected to direct questions, in a procedural order determined by law: first by the prosecutor, then by the injured person, the civilly liable party, the other defendants, their lawyers, as well as by his own defense attorney. The questions are asked directly, without the intervention of the presiding judge, whose intervention is limited to the censorship of any irrelevant, inconclusive or unnecessary questions, in consultation with the other members of the panel. Rejected questions are mandatory recorded in the conclusion of the hearing.

Subsequently, the members of the panel may ask additional questions to the defendant, in a subsidiary manner, to the extent that they consider them necessary for the complete and correct clarification of the case.

In the event that the defendant shows hesitation or states that he no longer remembers certain facts or circumstances or in the event that there are contradictions between the statements given previously and those made before the court, the presiding judge is entitled to request explanations, and may, if necessary, read out the previous statements, in whole or in part. However, the defendant cannot be compelled to give statements, benefiting from the right to remain silent. Consequently, in the event of refusal to answer, the court may proceed to read the statements previously given during the criminal investigation.

By virtue of the right to defense and the principle of finding the truth, the defendant may be re-heard whenever the court deems it necessary. In cases where there are several defendants, the hearing of each is carried out in the presence of the others, in order to ensure the contradictory and direct nature of the debate and to allow each to know the content of the statements of the others and to formulate questions, if necessary.

By way of exception, the court may order the separate hearing of the defendants, in the absence of the others, when the finding of the truth requires such a measure. In this case, the defendants are successively removed from the courtroom and heard individually. Subsequently, the statements thus obtained are read to the other defendants, in order to inform them of their content and to allow them, if necessary, to ask questions.

Hearing the parties and the injured party

According to the provisions of art. 380 of the Code of Criminal Procedure, after hearing the defendant and, where applicable, the co-defendants, the court proceeds to hear the injured party, the civil party and the civilly liable party, in accordance with the provisions of articles 111 and 112 of the same code, which regulate the manner of hearing these procedural participants.[1] The statements made by the injured party and the other procedural parties have the value of evidence, being likely to contribute to finding the truth and, implicitly, to the fair resolution of the case.

The hearing procedure applicable to these procedural subjects is governed by the same rules as in the case of the defendant, a fact justified

[1] By Law no. 70/2025, amendments and additions were made to article 111 of the Code of Criminal Procedure, regarding the hearing of the minor injured party, as well as of injured parties, for whom the existence of specific protection needs has been established under the law.

by the procedural position that the law attributes to each of them in the criminal trial, as interested participants in the correct determination of the solution to the criminal action and, if applicable, to the civil action.

During the hearing, the aforementioned persons have the opportunity to make free statements regarding the facts alleged to the court, and subsequently questions may be asked directly by the prosecutor, the defendant, his/her defense counsel, as well as by the other parties – the injured party, the civil party and the civilly liable party – or by their defense counsel. Also, the president of the panel of judges, as well as the other members thereof, may ask questions if they consider that they are necessary for finding the truth and for the fair resolution of the case.

The court has the prerogative to reject questions that are not pertinent, conclusive or useful to the case, these questions being expressly mentioned in the conclusion of the hearing. At the same time, the injured party, the civil party and the civilly liable party may be re-heard whenever the court deems it necessary, in order to complete the evidentiary material or clarify relevant aspects.

Although in practice the hearing of these participants is not carried out constantly, since, in general, their procedural position is expressed through written statements, we believe that the direct hearing should constitute a constant of the criminal trial, since it represents an essential means of judicial investigation, intended to contribute to the complete clarification of all aspects of the case.

Hearing of the witness, expert and interpreter

According to the provisions of art. 373 of the Code of Criminal Procedure, after the roll call is made, the witnesses are removed from the courtroom and are re-entered one by one, for the purpose of the hearing. Before the actual start of the deposition, the court verifies the identity of the witness and orders the taking of the legal oath, in accordance with the provisions set out in the General Part of the Code of Criminal Procedure.

The witness is given the opportunity to make a free statement, regarding the facts and circumstances known in connection with the case,

without being interrupted. Subsequently, if deemed necessary, questions may be asked of him, in the order provided for by law: first, by the party who proposed him for hearing. If the witness was proposed by the prosecutor, the latter may ask him questions directly, followed by the defendant, the injured party, the civil party and the civilly liable party. If the witness was proposed by one of the parties, questions may be asked successively by the latter, then by the prosecutor, the injured party and the other parties.

The court has the prerogative to reject questions that are not relevant, conclusive and useful for resolving the case, and the questions thus rejected are recorded in the conclusion of the hearing. Both the president of the panel of judges and the other members thereof may ask questions of the witness whenever they deem it necessary to find out the truth and the fair resolution of the case.

In the process of obtaining the witness's statement, certain circumstances may arise that require the adaptation of the evidence, as follows:

a) The witness's statement must be freely expressed, without reading a previous text. In the event that the witness holds a relevant document for the deposition, its consultation and reading before the court is permitted, subject to examination by the parties. The court may decide to attach the document to the file, in original or copy.

b) If the hearing in court of a witness previously heard during the criminal investigation phase or within the procedure provided for in art. 308 of the Code of Criminal Procedure is no longer possible for objective reasons, the court may order the reading of the previously given statement, in compliance with the principle of immediacy and only after taking the necessary steps for the direct hearing.

c) In order to establish the truth, the reading of the previous statement is also admissible when there are contradictions between the statement during the criminal investigation phase and the one in court or when the witness states that he no longer remembers the relevant facts or circumstances. This procedure is applied after the witness has freely

expressed himself, followed by the request for the necessary explanations.
d) In the event that, at the established deadline, one or more witnesses do not appear, the court may decide, in a reasoned manner, either to continue the trial in their absence or to postpone the case for a new deadline, in order to rehear, with the appropriate summons of the absent witnesses.

The procedural rules regarding the hearing of witnesses are applicable, accordingly, also in the case of hearing the expert or the interpreter, within the limits dictated by the specifics of their procedural role. Thus, the expert may be heard in relation to the conclusions of the expert report drawn up or in order to assess the opportunity to order a supplement or to carry out a new expert examination. As for the interpreter, he may be heard in relation to the translations made during the criminal trial, when the clarifications are necessary for the resolution of the case. Although art. 381 of the Code of Criminal Procedure expressly mentions only witnesses and experts, its provisions extend, by analogy, to the interpreter, with the exclusion of those procedural institutions which, by their nature, are not compatible, such as the institution of confrontation.

Postponement for new evidence

After the administration of all evidence obtained during the criminal investigation, the presiding judge shall request, in the order provided by law, the views of the prosecutor, the injured party, the parties and their defense attorneys on the necessity of administering new evidence. “New evidence” means evidence that has not previously been administered, either during the criminal investigation phase or during the trial. Proposals for new evidence must be accompanied by the mention of the facts or circumstances to be proven, as well as, as appropriate, the identification data of the witnesses or experts or the indication of the place where the material means of evidence are located. For example, in the event that, during the criminal investigation phase, a specialized finding was made, during the trial, an expert examination may be

requested, or, if the expert examination was made, a new expert examination may be requested, or it may be proposed to hear witnesses who attended the on-site investigation, being entered in the minutes drawn up by the criminal investigation body, but who were not heard at all during the criminal investigation.

The court puts the request for new evidence into the contradictory discussion of the procedural participants, and subsequently gives a reasoned ruling, admitting or rejecting the request in relation to the admissibility, relevance, conclusiveness and usefulness of the evidence. If the court grants the request for the administration of new evidence, it may order the continuation of the trial in the same session or postpone the case, according to art. 385 of the Code of Criminal Procedure, for the period necessary for its administration. If it considers that sufficient evidence has already been administered to clarify the case, the judicial investigation is declared closed, and the trial proceeds to the debate phase.

Uselessness or impossibility of administering evidence and waiving of evidence

In accordance with the provisions of art. 383 para. (3) of the Code of Criminal Procedure, in the event that, during the judicial investigation, a previously approved piece of evidence proves to be useless or impossible to administer, the court may order, by reasoned decision and after hearing the prosecutor, the injured party and the parties, not to administer it. The measure may be taken either at the request of the participants in the proceedings, or ex officio.

When the impossibility concerns evidence administered during the criminal investigation phase, the court will subject it to adversarial debate and will assess its probative value in resolving the case.

At the same time, according to the first paragraph of the same article, the prosecutor, the injured party and the parties may waive the evidence previously proposed. The waiver is discussed in a public hearing, and the court decides on it through a reasoned conclusion.

Although it may approve the non-administration of evidence, the court is not bound by the will of the party, and may decide to maintain the evidence if it considers it necessary for the fair resolution of the case.

Completion of the judicial investigation

The completion of the judicial investigation represents the procedural moment in the trial stage in the first instance in which the president of the trial panel finds that all the evidence considered to be pertinent, conclusive and useful for the fair resolution of the criminal case has been completely administered. This moment occurs after the prosecutor, the injured party and the parties to the trial no longer make requests for the administration of new evidence or, in the case of such requests, they have already been resolved in accordance with the legal provisions.

Until this procedural moment, the civil party has the possibility to modify the scope of the civil claims, either by increasing or reducing them, as well as to correct any material errors in the request for incorporation as a civil party (Udroiu, 2024, p.616). It may also request a change in the method of repairing the damage, requesting the granting of monetary compensation in the event that reparation in kind is no longer possible.

Also until the closure of the judicial investigation, the civilly liable party may intervene in the criminal trial, and, exceptionally, changes may occur in the composition of the trial panel.

In the event that no new requests are filed, or existing requests have already been resolved, the president of the panel orders, by express declaration, the termination of the judicial investigation, at which point the stage of debates on the merits of the case is passed.

Resumption of the judicial investigation

Resumption of the judicial investigation is a procedural remedy by which the court, noting during the deliberation the need to clarify some essential aspects of the case, orders its reinstatement and sets a new

trial date, in order to administer additional evidence within the judicial investigation. This measure is justified exclusively in the event that the resolution of the case cannot be achieved thoroughly and legally without supplementing the evidence.

In the event that the trial was conducted according to the simplified procedure of recognition of guilt, and the court finds that it is necessary to administer additional evidence, other than documents, it is obliged to reinstate the case and order the resumption of the judicial investigation, in compliance with the principle of adversarial proceedings. As a result of ordering the resumption of the judicial investigation, the court will proceed to summon the injured party, the parties and, if applicable, the other procedural subjects, for the established trial date.

Conclusions

Following a detailed analysis of the administration of evidence in the trial phase of a criminal case, it can be concluded that this procedural phase constitutes the central link of the criminal process, having a major relevance both in terms of establishing the judicial truth and in achieving the purpose of criminal justice. By its nature, the trial concentrates the entire evidentiary and legal analysis activity, being the moment when the court assesses the legality and validity of the accusation, with direct effects on the freedom and fundamental rights of the person under investigation.

References

Crişu, A. (2024). *Criminal procedural law. Special Part*, 4th edition, revised and updated. Hamangiu Publishing House.

Law no. 135/2010 on the Code of Criminal Procedure published in the Official Gazette no. 486 of 15 July 2010, as amended.

Law no. 70/2025 amending and supplementing Law no. 135/2010 on the Code of Criminal Procedure, published in the Official Gazette no. 452 of 15 May 2025.

Neagu, I., Damaschin, M., & Iugan, A.V. (2023). *Criminal procedural law - special part. Syntheses, cases, tests-grid*, 5th edition. Universul Juridic Publishing House.

Udroiu, M. (2024). *Summaries of Criminal Procedure. Special Part*, 5th edition, vol. I. C.H.Beck Publishing House.

Zarafiu, A. (2015). *Criminal Procedure. General Part. Special Part*. C.H.Beck Publishing House.