

HEARING IN CRIMINAL PROCEEDING – PURPOSE AND STAGES

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Abstract: *Interrogation is an investigative action consisting of the investigative body obtaining, in accordance with the rules established by law, testimony from the person being interrogated about facts known to them that are relevant to the subject matter of the criminal case. Interrogation combines a complex of techniques and methods, both tactical and psychological. The hearing combines a complex set of techniques and methods, both tactical and psychological.*

Keywords: *hearing; interrogation; accusation; criminal process.*

Introduction

The most common action in criminal proceedings is the hearing of the parties. At first glance, this action seems quite simple, involving the criminal investigation officer or prosecutor conducting a conversation with a person involved in the criminal proceedings. However, questioning is of essential importance to the criminal case, and in criminal procedure practice there is no case in which this investigative action is not applied. In criminology, as in criminal proceedings, there is no clear and generally accepted concept of interrogation. Each author analyzes the concept of interrogation from their own perspective, but we can undoubtedly say that the opinions of the authors are largely identical. Thus, researcher V.Ya. Karlov, defined hearing as a procedural action consisting in obtaining and recording, in accordance with the established procedure, the statements of witnesses, victims, suspects, and defendants

regarding the facts known to them and relevant to the correct resolution of the criminal case (Karlov, 2013, p.104).

Thus, hearing is understood as an independent investigative action, which consists in obtaining and recording the statements of the participants in the proceedings regarding the facts and circumstances important for establishing the truth in the case.

Hearing in criminal proceeding

Analyzing the specialized literature on hearings as a criminal investigation tactic in criminal cases, we can highlight the main purpose of the hearing as a procedural action in the form of obtaining and recording information relevant to the case from persons participating in the proceedings. In this regard, the information obtained from testimony must be truthful. Obtaining truthful information must also be the technical and tactical purpose of the hearing, which is why not only the criminal procedural aspect of the hearing is important, but also the criminalistic aspect.

In addition to the main purpose, other objectives are also pursued during the hearing, such as:

- identifying sources from which information about the criminal case under investigation can be obtained;
- verifying the authenticity of the evidence collected.

As a result of the main purpose of the hearing, situations may arise which, in criminalistics, are referred to as typical – without conflict, conflictual with moderate competition, conflictual with intense competition. In a non-conflict situation, the objectives of the person being interviewed and the person conducting the interview coincide. The particularity of this situation is that the criminal investigation officer pursues the goal of obtaining truthful statements, and the person being interviewed intends to cooperate with the authorities. However, the hearing of the victim cannot always be conducted in a conflict-free manner. For example, in most cases, victims of sexual violence intentionally conceal details of the crime for fear of being humiliated, but

in this case, the interests of the prosecutor and the interests of the person being interviewed are not in absolute contradiction.

Thus, the situation is described as conflictual with moderate competition. The person possesses accurate information and wishes to share it, but unintentionally distorts it, misleading the criminal investigation authorities, while believing that they are acting in good faith.

The third typical situation is called conflictual with strict competition. This situation is specific to the hearing of a suspect or accused person. In the case of conflict with strict competition, the person hides, intentionally distorts the information they know, and in some cases even refuses to make statements. In order to overcome any typical situation, the criminal investigation officer or prosecutor must use not only procedural actions (e.g., holding the person accountable for refusing to make statements), but it is also important to apply criminal forensic techniques.

A hearing as a term of criminal procedure is primarily a verbal investigative action, which is conducted orally and recorded by the criminal investigation organ in accordance with criminal procedural law. It should be noted that the Criminal Procedure Code of the Republic of Moldova does not expressly define the concept of hearing, as a result of which it becomes evidence examined in subsequent stages of the trial. The results of the hearing, namely the dialogue between the criminal investigation officer and the person being heard, are presented to the prosecutor and the judge in written form as evidence that does not convey a wealth of significant details characteristic of a hearing in a criminal investigation (Ciopraga, 1996).

That is why, from a criminalistic point of view of investigative tactics, the concept of hearing is much broader than the concept of hearing in criminal proceedings. Using the above definitions of interrogation, it is important to note that interrogation is not only an investigative action aimed at obtaining statements for the purpose of resolving the case, but also a vast set of tactical actions necessary for its conduct, because, in addition to verbal contact, nonverbal contact (gestures, facial expressions, intonation, motor skills, voice) is also

important during the hearing.

These particularities of the hearing are not taken into account in the procedural concept of the hearing, but knowledge of these tactics and their application in the professional activity of the criminal investigation bodies is self-evident, which determines their professionalism. When conducting the hearing, the criminal investigation officer must have a clear idea of the information they wish to obtain and the methods and means they will use to this end. The set of circumstances to be established is called the subject matter of the hearing. In order to determine the subject matter of the hearing, the criminal investigation officer must carefully examine the materials of the criminal case, analyze and identify the circumstances that need to be clarified, confirmed, or refuted through the hearing (Gheorghita, 2004.p.78).

In this regard, the subject of the hearing includes:

- circumstances related to the commission of the crime (method, place, time, consequences, etc.);
- the circumstances that establish or refute the guilt of certain persons and the motives for their actions, which influence the degree and nature of liability, as well as those relating to the extent of the damage caused by the crime;
- the circumstances that contributed to the commission of the criminal act or other data relevant to establishing the truth in the case under investigation.

In this regard, we cannot overlook the stages of the hearing. Thus, the hearing includes the following stages:

- preparation for the hearing;
- obtaining information directly from the person being heard;
- recording the proceedings and results of the hearing.

The preparation stage for the hearing is of an assurance nature, and in most cases the success of the hearing depends precisely on the quality of this stage. It is at this stage that the criminal investigation authorities determine the subject matter of the hearing. It should be noted that the volume of circumstances in the subject matter of the hearing may vary depending on the particularities of the case under investigation.

Thus, V. Ya. Karlov, notes that the subject of the hearing can be practically any circumstance that is important for the resolution of the case. In order to correctly determine the subject of the hearing, it is necessary to thoroughly study the case materials (Karlov, 2013, p.150).

In criminalistics, the preparation stage can be conditionally divided into special preparation and psychological preparation. Special preparation involves a series of actions such as studying the case materials, requesting documents, preparing the place for the hearing, and developing a plan for the hearing, as well as consulting with specialists, if necessary. Psychological preparation, in turn, involves the criminal investigation officer choosing the psychological "background" and atmosphere of the hearing in strict compliance with professional ethics, based on a study of the personality of the person being heard.

After completing these stages of preparation for the hearing, the next stage is the hearing itself—the direct obtaining of information from the person being heard. Specifically, this stage includes the hearing, both in the criminalistic sense and in the criminal procedural sense. Competently constructed stages of the hearing subsequently contribute to the recording of accurate hearing results, and the application of professional tactics will allow for the maximum amount of necessary information to be obtained, regardless of the personality of the person being heard. Thus, the first stage of the hearing is preliminary and includes asking questions from the questionnaire in the minutes.

Before starting the hearing, the criminal investigation officer or, where applicable, the prosecutor must verify the identity of the person being heard and then ask the questions necessary to complete the questionnaire. In this case, the criminal investigation officer has the right to go beyond the limits of the questions provided, most often for the purpose of establishing psychological contact. It is not possible to establish a single correct scenario for the hearing, because there are many circumstances that influence the behavior of the person being heard.

Creating a comfortable atmosphere for dialogue between the person being heard and the criminal investigation officer makes it possible to obtain comprehensive and sincere statements. Sometimes, this influence on the person being interviewed begins as soon as the summons is

handed over (for example, a personal invitation). This stage is particularly important when interviewing victims of sexual violence. Practice shows that establishing a relationship of trust between the victim and the criminal investigation officer, or the prosecutor, at this stage determines the success of the subsequent stages.

The second stage of the hearing is the free narrative phase. In the opinion of R. S. Belkin, the free narrative stage should precede the questioning stage, because even after carefully studying the case materials, the investigating officer cannot always imagine what information and how much of it is available to the witness or victim (Belkin, 2000, p.87).

The most interesting aspect of the free narration stage is that the criminal investigator may obtain information that he did not expect to obtain and, therefore, did not intend to obtain by asking questions. At the same time, free narration helps to recall events in sequence and, therefore, to reproduce completely what has been memorized. It is also important to observe the emotions, facial expressions, and gestures of the person being interviewed, as this information allows the criminal investigation officer to form a more complete picture of the interviewee's attitude toward the events of the crime and toward other persons involved in the case. During the free account, it is not recommended to interrupt the person being interviewed or to ask questions, as this may disrupt the order of the account and, as a result, the person being interviewed may become confused or fail to mention important details. In most cases, it is not recommended to take minutes at this stage, as this leads to interruptions and disrupts the order of the interviewee's account.

The next stage of the hearing is the question-and-answer stage. The success of this stage depends directly on the previous stages of preparation for the hearing. The criminal investigation authorities, using the information obtained during the preparation stage and the information provided during the free narrative stage, can clarify or supplement the free narrative. The type of information that the criminal investigation officer wishes to obtain determines the formulation of questions during the hearing. At this stage, the criminal investigation officer asks

questions in order to clarify, supplement, substantiate, or verify the evidence presented.

Questions should be formulated in a clear and precise manner. They should not contain hints or be suggestive in nature. The conduct and results of the hearing are recorded at the final stage of this phase. The fixation of the conduct and results of the hearing are regulated by Articles 104, 105, 109-112, and 153 of the Criminal Procedure Code of the Republic of Moldova.

As mentioned above, it is preferable that the statements of the person being heard be recorded in the minutes at the end of the hearing. In this way, at the request of the person being heard, they may be given the opportunity to make statements independently, but even in this case, the criminal investigation officer is required to draw up the minutes of the hearing. Explanations in the form of diagrams or sketches must be attached to the minutes.

Conclusions

Hearing a key investigative action, combining, first and foremost, a range of tactical and psychological techniques and methods. The use or non-use of a tactical technique, or its selection from a range of similar ones, depends entirely on the investigator's discretion, the investigative situation, and a number of other circumstances. Tactical interrogation techniques always involve psychological influence. When developing and applying them, it is important to evaluate their admissibility and legality based on scientific and ethical criteria. Psychological techniques, in turn, are also implemented in tactical techniques and have independent significance at certain stages of the investigator's work, during the execution of specific investigative actions.

In general, we note that, in essence, the criminal investigation officer or, where appropriate, the prosecutor is the person who has the obligation to reconstruct almost the entire criminal act by obtaining information from the persons being questioned, without being a participant in the crime himself. Absolutely all persons summoned for questioning possess some of the information relevant to the investigation

of the case, which is why it is so important for the criminal investigation officer to establish psychological contact during the questioning with all persons involved in the case.

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