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The judicial practice of hearing a witness in the Polish criminal proceedings
SUMMARY

The hearing of a witness is an integral part of any procedure - whether criminal, civil or administrative. This determines the interdisciplinary nature of this institution, which, in turn, translates into its unquestionable rank and importance and distinguishes it from other procedural and forensic activities. It can, in principle, be equalled only by visual inspection, which, although an integral part of the pre-trial proceedings in a criminal process, remains neglected and often omitted in the course of other procedures.

The interdisciplinary nature of the hearing can be understood in two ways. Firstly, by pointing out that it can be applied in any procedure; secondly, by drawing attention to the fact that in order to conduct it correctly and effectively it is necessary to have the knowledge not only in the field of law but also in such fields as psychology, forensic science, biology and sociology. A hearing should not be simplified and reduced to a passive acceptance of the testimony given. It should be understood as a profound interaction between the interrogator and the interrogated person, in which not only words, but also gestures, body reactions and all other non-verbal behaviours are rich in content.

It should be understood as a profound interaction between the interrogator and the interrogated, in which not only words, but also gestures, bodily reactions and any other non-verbal behaviour are in content.

In fact, we witness all sorts of events on a daily basis (and we can never be sure that they will not one day become the subject of legal proceedings).

We also often report the course of events to other people. Although this does not take place in such a formalised way as in a court hearing, it could be said that unconsciously we are preparing ourselves to act as a witness in a court trial and we are improving our ability to report, and thus testify. as to why, despite so many attempts and training, the quality of testimony given by witnesses in court proceedings is, for the vast majority, far from perfect or even of a level that could be considered satisfactory? It must be admitted that it is extremely difficult and uncomfortable for a witness to have to appear before the justice system, especially as the course of the judicial process is usually complicated and incomprehensible. For this reason, it seems necessary to provide additional support in the form of methods and techniques of questioning developed by forensic science. The knowledge of the psychology of testimony, which is a branch of psychology designed to help investigative and judicial authorities obtain and then evaluate the content obtained from personal sources of evidence, may also be useful. There is no doubt that in seeking to make the hearing as effective as possible, we come to a point at which the legal provisions themselves appear to be insufficient. This situation necessitates in turn the need to resort to forensic science, which begins where criminal law can do no more.
But how to listen in order to hear? And this is by no means about the pure aspect of stimulus reception which, in the model approach, is automatic and essentially unintentional. Each interrogator should ask themselves the question of how to listen in order to obtain and correctly understand as much as possible of the content the interrogated person wants to communicate to them. Following this line of reasoning, we come to the issue of the standards of hearing a witness. It is these standards that are particularly intended to create conditions for the interrogated person to speak freely, to reduce the discomfort related to the obligation to appear in court as well as to activate their memory. All this, in turn, is expected to translate into the higher quality testimonies. For this reason, the subject of this dissertation is the practice of observing the

above-mentioned standards of questioning a witness by the court. At the same time, a decision was made to narrow the area of consideration and research and to focus on persons questioned in Polish jurisdictional criminal proceedings.

The first chapter focuses on the issue of mental processes (vision, hearing, smell, taste, touch, balance, kinesthetic and bodily sensations) and considers the issue of the formation of testimony by analysing each of its stages, i.e. perception, remembering, forgetting and reconstruction as they determine the later form of the testimony given by a witness. The second chapter characterises the principles of the criminal process, emphasizing, in particular, those that should shape the practice of hearing witnesses. The third chapter looks at the interrogator and the interrogated person, emphasising both their respective strengths and weaknesses, as well as their duties and rights. The fourth chapter, on the other hand, is entirely devoted to the act of questioning, i.e. tactics, individual phases, and method of documentation. The considerations made in chapters one to four made it possible to look at the issue of the judicial practice of hearing a witness in criminal proceedings from a comparative perspective. The comparative and legal analysis was made in comparison with legal regulations in place both in the countries with the continental system (e.g. Germany and France) as well as the Anglo-Saxon system (e.g. the United States). These issues are dealt with in Chapter Five, which also addresses issues of European criminal law and the European Investigation Order. In turn, chapter six seeks to answer the question of how theory works in practice, research hypotheses were formulated and, in order to verify them, scientific research was carried out in the form of observations of court hearings. In the course of these, the judicial practice of questioning witnesses in criminal proceedings pending in a total of 13 courts located in different parts of Poland was analysed. In total, approximately 56 judges and 227 witnesses were examined in a total of 100 cases. The research covered, in particular, spontaneous account (frequency of its occurrence and average

duration), the method of documenting the activities and its impact on the process of giving evidence, questions asked during the questioning (their number and percentage of defective questions), the practice of reading out the witness interview report submitted in the preparatory proceedings, the lapse of time from the moment of the event to the moment of testifying at the trial, the person of the witness themselves and the way in which they were referred to by the trier. The results of the verification of the formulated research hypotheses are presented in chapter seven, which also evaluates the implementation of the principles of the criminal process in the judicial practice of questioning a witness in Polish criminal proceedings and formulates *de lege ferenda* postulates.

The general conclusion of the conducted research is that in principle the judicial practice of questioning witnesses in Polish criminal proceedings is correct as it is in compliance with the applicable legal provisions. However, by applying forensic science the act of questioning a witness could become much more effective and thus provide more valuable information about both the crime itself and its perpetrator. The solution to the diagnosed problems seems to be the education of law enforcement bodies as well as legal professionals in the field of forensics as, undoubtedly, one of the basic factors influencing the contemporary effectiveness of criminal prosecution and the efficiency of the tasks representatives of the judiciary are entrusted with is the dissemination of knowledge of forensic science. At the same time, this should be done not only among police personnel but also among prosecutors, judges, lawyers and attorneys-at-law. Proper education of lawyers in the field of forensic science is the basis for protecting the rule of law. There is no doubt that many miscarriages of justice would not have occurred if prosecutors, judges and legal representatives had been thoroughly familiar with scientific investigative methods. Unfortunately, the knowledge of even basic forensic science is still insufficient among lawyers.

Sporządzono: Toruń, 13 czerwca 2023 r.
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