

CRIMINAL PROCEDURAL AND CRIMINALISTIC ASPECTS OF THE INTERROGATION OF THE ACCUSED IN CRIMINAL PROCEEDINGS IN THE REPUBLIC OF SERBIA

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Abstract: Process of proving a fact is a complex and diverse procedural activity of parties to criminal proceedings and the criminal court in order to establish legally relevant and other facts in criminal proceedings. The provisions of the Criminal Procedure Code of the Republic of Serbia regulate evidentiary proceedings. One of the most important evidentiary activity is the hearing of the accused. The purpose of the hearing of the accused is twofold, namely to present to the accused what he is accused of, for which criminal act he is accused of, and to give him the opportunity to defend himself through the hearing. In this way, the defendant becomes familiar with the evidence that exists against him. The subject of this paper is the criminalistic and criminal procedural aspects of the hearing of the accused, which are very closely related. The application of criminalistic rules is inextricably linked to the legal provisions governing the criminal procedure and provides a significant guideline in order to obtain the best possible testimony. A successful hearing of the defendant should result in obtaining a statement that is legal and complete. The complexity and importance of the selected topic of this paper also requires the application of a certain methodology. The basic methods that will be applied for the needs of this paper are the normative method, the method of qualitative content analysis, the descriptive method, as well as the method of data analysis and interpretation, with consultation and consideration of different views of distinguished authors.

Keywords: *interrogation of the accused, evidentiary proceedings, criminal procedure, criminalistic rules, Republic of Serbia*
Field: Social sciences (Law)

1. INTRODUCTION

The hearing of the defendant is one of the evidentiary actions in the criminal procedure, which is provided for and regulated by articles 85-90 of the Code of Criminal Procedure of the Republic of Serbia. According to the prevailing opinion in modern legal theory in the field of criminal procedural law in Serbia, hearing the accused is one of the most important evidentiary actions in criminal proceedings. The defendant's statement itself has a dual legal nature. First and foremost, it represents a means of defense for the accused, but at the same time, it is also an evidentiary action that the court may take into account when establishing the facts and assess at its own discretion. Therefore, "the statement of the defendant has a double function - on the one hand, it represents a means of proof, because the court values it individually, but also in connection with other available evidence, while, at the same time, it is also a means of defense of the defendant, because in this way the defendant shows his attitude towards the chargers" (Grubač, 2006: 259; Škulić, 2011: 208).

The testimony of the defendant is any statement that the defendant gives in that capacity about the criminal offense charged against him and other issues of the criminal case that is the subject of the trial. The testimony of the accused "is given great attention because, as a rule, he knows best whether and how he committed the criminal offense he is charged with" (Mirkov, 2021: 826). Also, "the position of the defendant in criminal proceedings is particularly interesting, because it is about a person whose rights may be restricted (for example, the right to freedom) or his property may be reduced (for example, by imposing a fine). For this reason, it cannot be said that the defendant is uninterested in the final outcome of the proceedings. Unlike a witness who, for example, happened to be at the scene of a crime by chance, and therefore may be completely indifferent and unmotivated for the course of criminal proceedings, the same cannot be said for the defendant" (Mirkov, 2019: 162).

The subject of this paper is the criminalistic and criminal procedural aspects of the hearing of the accused, which are very closely related. The connection between criminal procedural law and criminalistics consists in the fact that criminalistics, when developing scientific methods of investigation and trial, starts from the basic theoretical premises of the science of criminal procedural law. It is precisely these scientific methods that are applied in criminal proceedings with the aim of enabling investigative

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and judicial authorities to fully achieve the objectives of the judiciary. Criminal procedure prescribes legal frameworks and forms for the activity of court proceedings, and criminalistics gives this legal framework practical content.

The complexity and significance of the chosen topic require the application of a specific methodology. The primary methods that will be applied for the purposes of this paper are the normative method, the method of qualitative content analysis, the descriptive method, as well as the method of data analysis and interpretation, with reference to and consideration of various viewpoints of prominent authors.

The statement of the accused can be obtained only through their interrogation. The interrogation of the accused "aims at two things: to present to the accused what they are being charged with, i.e., the criminal offense they are accused of, and to provide them, through the interrogation, with an opportunity to defend themselves." (Bejatović, 2014: 296).

2. CRIMINAL PROCEDURE ASPECT OF HEARING OF THE ACCUSED

According to Article 2, paragraph 1, item 2 of the Code of Criminal Procedure, the accused is a person against whom an indictment has been filed but not yet confirmed, or against whom a criminal complaint, private prosecution, or a motion for the imposition of a security measure of mandatory psychiatric treatment has been filed, and the main trial or hearing for the imposition of a criminal sanction has not yet been determined, that is, a term that serves as a general term for the suspect, the defendant, the accused, and the convicted person.

In theory, there is a prevailing view that "the accused is a natural person, and exceptionally a legal entity, against whom criminal proceedings are conducted at the request of an authorized prosecutor, with the aim of determining whether they have committed a criminal offense and whether the conditions for imposing a criminal sanction are met" (Brkić, 2014: 185). It is also held that "the accused is a person against whom criminal proceedings have been initiated and are being conducted due to a well-founded suspicion that they have committed a criminal offense, and who is an independent principal procedural subject bearing the function of defense" (Stevanović & Stanojević, 2005: 90). Additionally, there is the opinion that "the term 'accused' refers to a natural person against whom an authorized prosecutor files and pursues a criminal charge, while the court conducts criminal proceedings to determine whether the person is criminally responsible and whether the conditions exist for imposing an appropriate criminal sanction" (Grubač, 2004: 190).

The defendant is the main procedural subject and party in the criminal proceedings, completely procedurally equal to the authorized prosecutor. The equality of the defendant as a party is achieved by his right to both material and formal defense, but also by the presumption of innocence, as an essential principle that regulates the position of the accused in criminal proceedings, and at the same time an important part of the rule of law and a democratic society. According to the provisions of Article 3 of the Code of Criminal Procedure, everyone is considered innocent until his guilt for a criminal offense is determined by a final court decision. State and other bodies and organizations, media, associations and public figures are obliged to comply with this rule and not to violate the rights of the defendant with their public statements about the defendant, the criminal act and the procedure. When speaking of the violation of the presumption of innocence, public statements made by state authorities that severely infringe upon the rights of the accused are often the first thing that comes to mind. However, a far more problematic violation of the presumption of innocence is reflected in the widespread belief among judicial authorities that an accused person who chooses to remain silent does so because they are certainly guilty (Beljanski et al., 2019: 11).

The hearing of the defendant is a very important evidentiary activity, because his statement contains facts that benefit or harm the defendant (Matijašević, 2024: 327).

The hearing of the defendant is an evidentiary action that will be carried out only if the defendant is available to the court, i.e. if the defendant is tried in his presence. The interrogation of the accused is an evidentiary action that will be carried out only if the accused is available to the court, that is, if the trial is conducted in the presence of the accused. According to legal requirements, "for criminal proceedings to be successfully conducted, it is necessary to ensure the presence of certain individuals, primarily the accused" (Matijašević Obradović & Zarubica, 2018: 2). Exceptionally, this evidentiary action will not be carried out in a situation if the defendant is not available to the court, and the conditions for a trial in absentia are met (according to Article 381 of the Code of Criminal Procedure, the accused may be tried in absentia only when there are particularly justified reasons to try him even though he is absent, provided that he is on the run or not available to state authorities, and the decision on the trial in absentia is made by the chamber, on the motion of the public prosecutor).

During the hearing, the defendant can have an active approach, that is, he can give a statement about the criminal offense he is charged with, and he can, on the other hand, have a passive approach, refraining from any statement. Therefore, it is important "to give the defendant the opportunity to be heard, and whether he will use that right or not depends only on him" (Škulić & Bugarski, 2015: 265).

The aim of this evidentiary action is to hear the accused in the first place about everything he has to say regarding the accusation against him. Only after giving a statement, he can be asked questions if there is a need to clarify some circumstances that were not mentioned or remained vague, unclear or contradictory.

During the course of the criminal proceedings, the accused is questioned several times and in various stages of the proceedings - in the investigation, at the main trial before the court of first instance, at the main trial before the court of second instance. The hearing of the defendant in criminal proceedings is carried out by the holder of the public prosecutor's office or the court. Exceptionally, in accordance with the provisions of Article 289, paragraph 4 and paragraph 5 of the Code of Criminal Procedure, under the conditions and in the cases prescribed by law, it is possible to interrogate the suspect in the pre-investigation procedure, which is carried out by the police. It should be emphasized here that it should be emphasized that "a specific condition for the interrogation of a suspect by the police is that the suspect must have given both their consent to be interrogated and their statement in the presence of legal counsel. The record of this interrogation may be used as evidence in the proceedings and must be submitted without delay to the public prosecutor, if they were not present during the interrogation" (Škulić & Bugarski, 2015: 269).

The interrogation of the accused consists of two parts: "The first part is conducted by the authority leading the specific phase of the proceedings in which the interrogation is undertaken, by collecting information from the accused to establish their identity, informing the accused of their rights, and warning them of their legal obligations. The second part substantively represents the interrogation concerning the criminal event" (Bejatović et al., 2013: 66).

Therefore, after the prerequisites for hearing the defendant have been met, the defendant who wants to present his defense is further heard about the criminal event. The Code of Criminal Procedure also prescribes the rules for questioning the accused.

According to the provisions of Article 86, paragraphs 1-3 of the Code of Criminal Procedure, the defendant is heard orally, with decency and with full respect for his personality. The defendant has the right to use his notes during the hearing. During the hearing, the defendant will be allowed to state in an unhindered presentation about all the circumstances against him and to present all the facts that serve for his defense. When the defendant finishes his statement, and it is necessary to complete or clarify the testimony, he will be asked questions that must be clear, definite and understandable, must not contain deception, nor be based on the assumption that he has admitted something that he did not admit, and must not represent an inducement to answer.

If the accused later statements differ from the earlier ones, and especially if the defendant retracts his confession, the questioning authority may, in accordance with the provisions of Article 86, paragraph 4 of the Code of Criminal Procedure, invite him to state the reasons why he gave different statements, i.e. why he retracted his confession. Then, if the accused is deaf, he will be asked questions in writing, if he is mute, he will be asked to answer in writing, and if he is blind, during the hearing, the contents of the written evidence will be explained to him orally. If, however, the interrogation cannot be conducted in this manner, an interpreter who can communicate with the accused shall be called. If the accused does not understand the language of the proceedings, questions shall be posed to them through a translator.

A record is kept of the defendant's hearing.

In terms of its substance relative to the indictment, i.e., what the accused is being charged with, "there are two basic types of statements given by the accused: confession and denial. This applies only if the accused actively defended themselves, meaning they provided a statement. If the accused remained completely passive, that is, defended themselves by remaining silent, such a form of defense can never imply a confession but must be treated as a complete denial" (Škulić, 2013: 211).

Finally, the statement of the accused is assessed like any other piece of evidence, in accordance with the principle of free evaluation of evidence and the judge's free conviction. The fact that the accused has chosen not to present a defense or respond to the questions posed must not be considered an aggravating circumstance, nor may it be evaluated as evidence in any way.

3. THE CRIMINALISTIC ASPECT OF HEARING OF THE ACCUSED

The application of criminalistics as a science is inextricably linked to the planning of the initial phase of the preliminary stage of criminal proceedings—the pre-investigation procedure (Vodinelić, 1996: 21). The tactics, techniques, and psychology of interrogating the accused depend on their procedural status. For a successful interrogation, “a broad knowledge of general and criminal psychology is necessary, along with a certain level of experience, as well as familiarity with the personality of the accused and their typical patterns of behavior” (Aleksić & Škulić, 2011: 203).

Criminalistic tactics recommend that appropriate conditions for this investigative action must be ensured and emphasize that confronting the accused during the interview and hearing is counterproductive and contrary to proper tactics, as it prevents the establishment of trust.

The hearing should be focused on “obtaining objective facts, it should be conducted neutrally, and if a confession is made, one should not show joy about it. The hearing of the accused is best done when he is caught in the act immediately after deprivation of liberty, before he has yet managed to construct his defense. The hearing should be started when the subject is known and when the interrogation has been prepared and planned. It is necessary to determine the tactics that should be elaborated in a plan containing where, when and how to conduct the hearing, the sequence of the interrogation and hearing, questions which should be presented, the evidence that will be used and for what purpose. The success of the hearing depends on a number of elements of a material, psychological and tactical nature” (Aleksić & Škulić, 2011: 204).

When it comes to elements of a material nature, they include the place of the hearing, time of the hearing and knowledge of the case as one of the necessary conditions for a successful hearing of the accused.

In case of the elements of the psychological nature, the questioning authority should prepare all the conditions for the upcoming hearing. They should have the data for the psychological evaluation of the personality, given that they are the best indicators for determining the interrogation tactics. Namely, “criminalists very carefully examines the personality of the criminal, his knowledge, skills, modus operandi he applies during the execution and concealment of crimes, customs, understandings, way of life and psychology, all with the aim of developing the most expedient methods for detecting, proving, elucidating and preventing criminal acts” (Aleksić, Škulić & Žarković, 2004: 174). By getting to know the accused’s personality, “the interrogator can: properly establish contact with the accused; assess and understand the relationship of the accused with other participants in the crime, establish the motive for committing the crime and correctly choose the interrogation tactics” (Simonović, 2004: 183-184).

During the hearing of the defendant, his reactions to the questions should be observed and monitored. During the hearing of the defendant, the questioning authority should not show its feelings, but should be objective and calm.

When it comes to the element of a tactical nature, “it is recommended that the hearing be conducted by only one judge because confessions and inner intimate life are reluctant to be presented to a wider circle of people, and it is more difficult to establish contact with more people. This rule should be deviated from when it comes to hearing a woman, for whom there is information that she is mentally unbalanced and prone to excesses. Such hearings, if not performed by a woman, should be performed in the presence of several people in order to avoid false accusations by these women.” (Aleksić & Škulić, 2011: 205).

The defendant should be informed of his rights in the procedure, his physical and legal identity and the order of presentation of evidence should be determined. The event should be presented and examined in the order in which it happened, and such presentation helps the defendant to recall the event, and also has a certain psychological effect.

Practice has shown that “the defendant’s fear of the authorities restrains the defendant and calls into question the success of the interrogation and hearing. Practice also holds that using a system of indirect rather than direct questions is generally more effective, although this ultimately depends on the specifics of each individual case. The success of the hearing should not be measured by whether a confession is obtained, and in cases where a confession is given, it is necessary to thoroughly examine the motives behind the confession and then verify it.” (Aleksić & Škulić, 2011: 205).

It is considered that “immediately providing a detailed alibi by the defendant is a sign of justified suspicion. The suspect most often supports his claim by citing other persons who can confirm the truth of his statement, offering and attaching various documents that prove his presence in another place, that is, pointing to objects and traces that, by their existence, place and time of origin, age, etc., can indicate that the suspect was in another place at the critical time” (Žarković, 2010: 139-140).

Tactical bluff is usually considered one of the tactics used during the hearing of the accused. Tacti-

cal bluff can be defined as “one of the elements of the system of tactical measures, a procedure aimed at obtaining important information or evidence, in such a way that the interrogator consciously tries to create an apparent situation, which is at least partially based on unverified circumstances, which will encourage the suspect to reveal previously undiscovered evidence” (Feješ, 2011: 113). The goal of tactical bluffing is to create such a situation that the suspect, who has no knowledge of what the interrogator knows, reveals some evidence that refutes or confirms important assumptions.

The permissibility of various tactics largely depends on the specific situation, but certain general requirements must still be upheld, as is the case with any other evidentiary method. It is crucial to emphasize that *condicio sine qua non* for using the accused's statement as evidence is that the criminalistic rules applied during its acquisition must comply with the provisions of the Criminal Procedure Code (Mikov, 2019a: 312).

A successful informative interview presupposes knowledge of the fundamentals of the psychology of testimony, methods of general and criminal psychology, general rules of conducting interviews, relevant criminalistic experience, and quality individual preparation. This preparation includes: gathering information about the person to be interviewed, studying all existing data related to the event in question, defining the circumstances that need clarification through the interview, preparing the key questions and the tactics for asking them, and selecting the location, timing, and manner in which the interview will be conducted and documented (Matijević & Marković, 2013).

Extensive preparation “for the successful conduct of an informative interview implies the collection and verification of a lot of data about the person. It is obligatory to collect data on the identification marks of the person, as well as those related to his earlier life, especially the criminal activity for which he is suspected or convicted, then data on his occupation, social status, physical and psychological characteristics, relationships and connections with other persons, especially with those who are prone to criminal behavior” (Matijević & Marković, 2013: 238-239).

Conducting of the hearing can be divided into three phases, namely the introductory interview, the phase of free presentation and the phase in which the official asks additional questions.

Conducting an informative interview requires thorough preparation, which becomes particularly important when the interview is to be conducted with a suspect. It is essential to possess reliable information obtained through prior operational efforts. By using such information, an official can lead the suspect into making a fabricated statement that results in contradictions so significant that altering their stance and giving a truthful statement becomes the only logical way out of the situation.

The preparatory activities undertaken before interviewing a suspect are “focused on reviewing existing documentation concerning prior actions taken by competent authorities regarding the specific criminal offense (records, official notes, reports, witness statements, expert findings and opinions, etc.), as well as on collecting and verifying data on all involved parties, especially the suspect” (Matijević & Marković, 2013: 249).

Particular attention must also be paid to documenting the informative interview with a suspect which “for various practical reasons, it is recommended that the entire course of the informative interview be audiovisually or audio recorded, and subsequently transcribed. This approach is tactically more favorable, among other things, because written documentation gives the conversation a distinctly formal tone, slows down its pace, causes time delays, dictation, and repeated playback for verbatim transcription, etc., which may have a discouraging effect on the person who, in an atmosphere of trust, a certain familiarity, and relaxation created by the official's skill, decides to confess to the offense and begins giving a statement rich in detail. On the other hand, written documentation provides a perpetrator giving a false statement much more time to think about how to respond to specific questions while maintaining logical consistency and avoiding contradictions with indisputably established facts” (Matijević & Marković, 2013: 256–257).

4. CONCLUSIONS

The primary objective of criminal proceedings is to ensure that no innocent person is convicted. Evidence represents a complex and diverse procedural activity carried out by the parties to the criminal proceedings and the criminal court, with the goal of establishing legally relevant and other facts within the criminal process. The Code of Criminal Procedure Code evidentiary actions, that is, the regular means of evidence as sources of proof in criminal proceedings. One of the most significant evidentiary actions is the hearing of the accused.

The hearing of the accused aims at two things: to present to the accused what they are being charged with, i.e., the criminal offense they are accused of, and to provide them with an opportunity to defend themselves. In this way, the accused becomes acquainted with the evidence that exists against

them.

The hearing of the accused is a regular evidentiary activity, and in many ways, it is specific compared to other types of regular evidentiary activities. Elucidation of all key peculiarities, and a complementary review of two very related approaches in the given analysis (referring to the criminalistic and criminal procedural perspectives), was the primary approach in the development of the subject and the realization of the objective of this paper – the analysis of criminalistic and criminal procedural aspects of the interrogation of the accused.

Namely, the Code of Criminal Procedure regulates the procedural framework and guarantees that must be fulfilled for the statement, obtained during the hearing, of the accused to be considered lawful. During the interrogation of the accused, the application of fundamental criminalistic principles is no less important, with the goal of obtaining a statement that will, to the greatest extent possible, contribute to clarifying the event that is the subject of the proceedings.

As stated in the paper, the application of criminalistic rules is inextricably linked to the legal provisions governing criminal proceedings and provides significant guidance for obtaining a higher quality statement. A successful hearing of the accused should result in a statement that is both lawful and complete — meaning it was obtained in accordance with the provisions of the Code on Criminal Procedure — and as such, is suitable for clarifying, as precisely as possible, the facts related to the commission of the criminal offense.

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