

The Tactics of Hearings in the Case of Crimes Against Patrimony

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Abstract

In the investigation of crimes against patrimony, an important role in the investigation methodology is played by the hearings. In general, we refer to three types of hearings, the hearing at the scene of the crime – in order to prepare the search of the crime scene and the subsequent investigation of the offence, a hearing as part of the criminal investigation and the hearing before the court.

Throughout this article we will discuss particularly the forensic tactics of hearings as part of the criminal investigation, referring to the different statuses of the person undergoing the hearing, who may belong to different backgrounds/categories of various legal standings, namely those of: victim - injured party, witness, accused or defendant.

In the first part of the article, we will present the provisions relevant for crimes against patrimony, contained in the Romanian Criminal Code. The Special Part, in the title reserved for the offences of this category, the structure of the title, and also short references to the legal content of each offence.

In the second part of the article, we will show the stages in the preparation of a hearing and the actual stages of hearings in the case of crimes against patrimony. In this sense, we will discuss: the hearing preparation and the conduct of the hearing, as well as the preliminary discussion phase, the phase of free reports and the phase of addressing questions and receiving answers.

Keywords: hearings, crime, patrimony, law

1. Introduction

The notion of “patrimony” is broader than the notion of “property” (Stătescu, 1970), including not only the property, but also all the rights and obligations of economic value.

In the Romanian Criminal Code. The Special Part, the offences against patrimony are to be found in Title III, entitled “Crimes against Patrimony”, structured as follows: Articles: 208-the offence of theft, 209-the offence of aggravated theft, 210-the punishment of theft on complaint, 211-the offence of robbery, 212-the offence of piracy, 213-the offence of embezzlement, 214-the offence of fraudulent management, 215-the offence of fraud, 216-the offence of misappropriation of found property, 217-the offence of destruction, 218-the offence of aggravated destruction, 219-the offence of negligent destruction, 220-the offence of disturbance of possession, 221-the offence of concealment.

1.1 Simple Theft

According to Art. 208 par. 1 Romanian Criminal Code. The Special Part, this offence consists in “taking a movable asset from the possession or custody of another, without the consent of the latter, for the purpose of unjustly appropriating it”.

The Romanian Criminal Code covers three types of theft: simple theft, theft of a vehicle as a variant of the category, and aggravated (qualified) theft as an aggravated form.

1.2 Aggravated Theft

Article 209 par. 1 of the Romanian Criminal Code. The Special Part provides the limited circumstances under which a theft is aggravated. Namely, in the case of a simple theft committed:

- a) by two or more persons together;
- b) by a person carrying a weapon or a narcotic substance;
- c) by a person wearing a mask or disguise or by a transvestite person;
- d) on a person unable to express their will or defend themselves;
- e) in a public place;
- f) in a means of transportation;
- g) during the night;
- h) during a natural disaster;
- i) through burglary, by escalade or by unlawfully using an original or copied key.

The article also provides for the following situations:

- a) Theft of an asset that is part of the cultural heritage (Art. 209 par. 2 letter. a) Criminal Code.);
- b) Theft of an act serving as proof of the civil status, for legitimation or identification (Art. 209 par. 2 letter. b) Criminal Code).

According to Art. 209 par. 3 Criminal Code, a theft is aggravated if its object is represented by the following assets, in which case it is punishable by imprisonment from 4 to 18 years:

- a) crude oil, gasoline, condensed liquid ethane, liquid ethane, gas, diesel and other petroleum products or natural gas from pipelines, storage deposits, tanks, or tank wagons;
- b) components of irrigation systems;
- c) components of electric networks;
- d) a signaling, alarm or alert device or system in case of fire or other public emergency;
- e) a means of transportation or other means of intervention in case of fire, railway accidents, road, sea or air accidents, or in case of a natural disaster;
- f) railway, road, water, air traffic control and security installations and their components, as well as components of the vehicles involved;
- g) assets by the appropriation of which the safety of traffic and people on public roads is endangered;
- h) cables, lines, telecommunication and radiocommunication facilities and equipment and communication-related components.

1.3 Robbery

According to Art. 211 par. 1 Romanian Criminal Code. The Special Part, it is “the theft committed by use of violence or threats or by rendering the victim unconscious or unable to defend themselves, as well as the theft followed by the use of such means in order to keep the stolen good or to remove the traces of the crime or for the offender to secure his/her refuge”.

According to Art. 211 par. 2 Romanian Criminal Code. The Special Part, robbery is aggravated if it was committed under the following circumstances:

- a) by a person wearing a mask or disguise or by a transvestite person;
- b) during the night;
- c) in a public place or a means of transportation.

In these situations, the punishment is imprisonment from 5 to 20 years. According to Art. 211 par. 3 Criminal Code, a robbery is graver and punishable by imprisonment from 7 to 20 years, if committed in the following circumstances:

- a) by two or more persons together;
- b) by a person carrying a weapon or a narcotic or paralyzing substance;
- c) in a dwelling or its appurtenances;
- d) during a natural disaster;
- e) it had one of the consequences shown in Art. 182 Criminal Code.

1.4 Piracy

The Romanian Criminal Code. The Special Part, in Art. 212, provides the criminal offence of piracy, defined as “the robbery with violence committed for personal purposes by the crew or passengers of a ship against persons or property that are on that ship or against another ship, if the ships are on the high seas or in a place that is not subject to the jurisdiction of any State”.

1.5 Abuse of Trust

Art. 213 of the Romanian Criminal Code. The Special Part provides the offence of abuse of trust as “the appropriation of another's movable, held under any title, or the unlawful disposition of that property, or the refusal to return it”.

1.6 Fraudulent Management

The Romanian Criminal Code. The Special Part, in Art. 214 par. 1, provides that the offence of fraudulent management consists in “damages caused to a person, in bad faith, during the administration or preservation of their assets by the person in charge of the administration or preservation of those assets”.

1.7 Fraud

Under Art. 215 of the Romanian Criminal Code. The Special Part, the offence of fraud consists in “misleading a person by presenting a false fact as true or a true fact as false, in order to obtain an unlawful material benefit for oneself or for another, if this resulted in a loss”.

1.8 Embezzlement

Under Art. 215 of the Romanian Criminal Code. The Special Part, this offence consists in “the appropriation, use or trafficking, by a public servant, in their own interest or for another, of money, securities or other assets that they manage or administer”.

1.9 Misappropriation of Found Property

The Romanian Criminal Code. The Special Part provides, in Art. 216 par. 1, the offence of misappropriation of found property, as the act of “not surrendering, within 10 days, a found property to the authorities or to the person who has lost it, or disposing of that property as their own” and, in par. 2, as “the unlawful appropriation of a movable belonging to another, that came into the perpetrator's possession by error”.

1.10 Destruction

The Romanian Criminal Code. The Special Part provides, in Art. 217 par. 1, the offence of destruction as having the following content: “the destruction, degradation, or bringing into disuse of a good belonging to another or preventing the taking of measures to conserve or rescue such a good, as well as the removal of such measures taken”; in par. 3, the offence is “the destruction, degradation or bringing into disuse of oil or gas pipelines, of a high-voltage cable, of telecommunications or radio and television broadcasting equipment and facilities or of the water supply systems and water mains”.

1.11 Aggravated Destruction

According to Art. 217 Romanian Criminal Code, the punishment is imprisonment from 10 to 20 years and the denial of certain rights if “the facts referred to in Art. 217 had especially serious consequences” and, if they resulted in a disaster, the penalty provided is life imprisonment or imprisonment for 15 to 25 years and the denial of certain rights.

1.12 Negligent Destruction

Art. 219 par. 1 of the Romanian Criminal Code. The Special Part provides the sanction of imprisonment from one month to two years or a fine if, in committing the offence, an asset is destroyed, degraded or brought in a state of disuse, through negligence, even if that asset belongs to the perpetrator, in case the offence is committed by fire, explosion or any other similar means and if it results in a public emergency. Under the name of “negligent destruction”, Art. 219 Criminal Code criminalizes both the simple and aggravated versions of this crime.

The same sanction is provided in par. 2 of Art. 219 in the case of negligent destruction or degradation of an oil or gas pipeline, of a high-voltage cable, of telecommunications or radio and television broadcasting equipment and facilities or of the water supply systems and water mains, if it resulted in bringing them in a state of disuse.

1.13 Disturbance of Possession

The Romanian Criminal Code. The Special Part defines this offence in Art. 220 par. 1 as “the unlawful occupation, in whole or in part, of a property owned by another without his consent or without prior legal approval, or the refusal to evacuate the property thus occupied”.

1.14 Concealment

Art. 221 of the Romanian Criminal Code. The Special Part provides the offence of concealment as the act of “receiving, acquiring or transforming an asset or facilitating its turning to account, knowing that the asset has resulted from the committing of an offence under the criminal law, if this was aimed at obtaining a material benefit for oneself or for another”.

2. Preparation of the Hearings

During the investigation of crimes against patrimony, an important role in the investigation methodology is played by the hearings. In general, we refer to three types of hearings, hearings at the scene of the crime – in order to prepare the search of the crime scene and the subsequent investigation of the offence, hearings as part of the criminal investigation and the hearing before the court.

Throughout this article we will discuss particularly the forensic tactics of hearings as part of the criminal investigation, referring to the different statuses of the person undergoing the hearing, who may belong to different backgrounds/categories of various legal standings, namely those of: victim – injured party, witness, accused or defendant.

a) The Romanian Criminal Procedure Code, in Art. 24, par. 1, provides that: “the person who suffered a bodily, moral or material damage as a result of the offence, if involved in the criminal trial, is called an *injured party*” (The Romanian Criminal Procedure Code).

Legal psychology defines the victim as the person who suffers the consequences of a criminal act, consequences of a physical, material or moral nature (Bogdan, Sântea and Drăgan-Cornianu, 1983), and, according to some authors, the victim is “any living human being actually undergoing the unpleasant consequences of trauma, whether self- or other-inflicted or brought about by events” (Voinea, Iftenie, 2004).

We will also take into account the fact that suffering can be undergone by:

The primary victim, the person on whom the victimizing trauma is exerted directly.

The secondary victim, represented by the family, the environment, the community to which the traumatized person belongs.

The tertiary or general victim, represented by the entire human society (Voinea, Iftenie, 2004).

b) Witness testimonies are the most common form of evidence in criminal proceedings. Witnesses may be of help to establish the circumstances in which the crime was committed, the methods and means used by the criminals, data about the offender, information that may lead to identifying the perpetrators of such acts (Butoi, Butoi, 2003; Buş, 1997; Aioaniţoae, Stănică, Gheorghe, Bercheşan, 1989).

The Romanian Criminal Procedure Code provides that the *witness* is an individual who, having knowledge of a fact, or of a circumstance likely to serve the finding of the truth in the criminal case, is examined by the judicial authorities with regard to the facts and circumstances that he knows (Romanian Criminal Procedure Code).

From the content of the legal provisions, we can infer the conditions a person must meet in order to become a witness in the criminal proceedings:

The existence of a criminal trial pending before the judicial bodies.

It should be an individual who has knowledge of facts and circumstances which might contribute to finding the truth in the criminal proceedings concerned.

The individual should be examined by the judicial bodies with regard to facts and circumstances that he knows.

In the absence of one of the three conditions mentioned above, only a formal statement will be allowed, which, however, cannot be used in the criminal proceedings (Dongoroz, Kahane, G. Antoniu, Bulai, Iliescu, Stănoiu, 1976).

Generally speaking, anyone can become a witness, but the law limits the participation of certain persons, as follows:

The person must be able to testify – should not suffer from any disease.

The person should not be bound by professional secrecy.

The injured person may be heard as a witness, if it is not a civil party or participating in the hearing as an injured party.

The statement of the witness should be useful, pertinent and conclusive to the settlement of the case.

The judicial body, knowing thoroughly the laws and the tactical procedures of hearing, must determine the witnesses to declare what they know and is relevant to the case and then use the reports of the witnesses in the criminal proceedings in order to find the truth and for the fair settlement of the case (Aioanițoiaie, Stănică, Gheorghe, 1989).

Psychologically, a testimony consists in the involuntary observation of an act by the witness and its reproduction before the judicial bodies. Thus, any person, without wanting it or even against their will, is an instrument for the achievement of justice (Bogdan, 1983).

c) The hearing of the *accused* or *defendant* is the procedural and forensic tactics activity carried out by the prosecutor in order to establish data of probative value, necessary to finding out the truth in a case (Aioanițoiaie, Bercheșan, Butoi, Marcu, Palanceanu, Pletea, Sandu, Stancu, 1992).

According to Art. 66, par. 1, of the Romanian Criminal Procedure Code, the accused or defendant enjoys a presumption of innocence and is not obliged to prove their innocence. The burden of proof lies with the prosecution and the court.

The authority in charge of the criminal proceedings is required to play an active role throughout the research, in the sense of verifying the evidence and corroborating it with other evidence and means of evidence included in the case file. It must gather evidence both in favour of and against the accused or defendant, even if the latter admits to the facts (Nechita, 2009).

2.1 Rules Applied in Criminal Hearings

In the preparation of a hearing and in order for the hearing to reach its goal, it is recommended that certain rules of forensic tactics should be known and taken into account.

a) In addition to issues related to the preparation, carrying out and outcome of the hearing activities, in order to choose the best hearing tactics, the judicial body should take into account *the psychology of the person heard*, the way they acted before the committing of the crime, during and after it was committed, and their behaviour during the interrogations.

b) Also, an important role in the success of the hearing is played by *the investigator's psychological particularities*, the way the rules are established during the hearing, both with regard to the behaviour of the criminal investigation body and to creating an adequate background for the hearing, so that honest statements can be obtained in the case under investigation.

c) For the hearing of persons of different legal standings and belonging to different categories of people (minors, elderly, sick persons, disabled persons, persons who have ingested substances, etc.), it is recommended that the *characteristics of a hearing* arising from the special category to which the persons interviewed belongs should be taken into account. For example, if the person heard is a minor, the minor's psychological particularities will be taken into consideration, such as his imagination, inventiveness, fear of parents and educators, a feeling of shame, foolish courage, etc. All these may influence the minors' very process of perception, remembrance and rendering of the facts.

d) Throughout the preparation and during the hearing, the judicial body will seek to establish *an optimum written, oral and nonverbal communication*. Thus, the statements of the person heard, obtained through the communication between the prosecutor and the prosecuted/interrogated person, will be analyzed, synthesized, compared and interpreted, in order to be used. For example, in a hearing, situations may arise when a version developed at the beginning of an investigation is fully confirmed by the statements obtained during the hearings, other instances when it is partly confirmed and there are also cases when it has no further support resulting from the hearing.

e) The knowledge of the psychic mechanism of primary information processing, of processing the testimony, of the way statements are formed, of the objective and subjective factors that may influence a statement, will be a condition for the success or failure of a hearing.

2.2 Study of the Case Material

In addition to the basic information the judicial body has on an offence (for example, from the victim's referrals or from other sources), following the study of the file, the authorities will know the nature of the offence, the date,

place and conditions under which the offence was committed, the nature and seriousness of the consequences of the offence under the criminal law (for example, the physical injuries suffered and the material damage resulted).

The traces found, recorded and collected at the crime scene provide some information about what happened, the sequence of actions, the time elapsed between the committing of the deed and its discovery.

If the person interrogated has observed/committed the act directly, they can provide most information about how the crime was committed, about the people involved in the offence, the instruments used. In case they did not observe the offence directly, they can still provide information on the nature of the objects stolen, where they were, some of their general and individual characteristics and, sometimes, data about specific individuals who had an interest in the case investigated.

2.3 Knowledge of the Persons to be Heard

To this purpose, investigations of the social microgroups to which the person to be heard belongs will be carried out. The family of the person interviewed could provide necessary information to the judicial body, regarding the behaviour of the person heard within their family, certain vices they have developed and how they spend their leisure time (Mateuț, 2000).

In the speciality literature, it has been emphasized that leisure has three functions: resting, entertainment and personality development. Following the content of that concept, the structure of the leisure time and how it is organized, the judicial body may find the places that the person to be heard frequents, their behaviour in society, their hobbies, as well as other data, such as: diseases they have or had, the food they prefer, their financial possibilities.

The family may inculcate certain misconceptions about life, a lack of self-restraint or ignore the natural and spiritual needs of the children. The lack of mutual affection, certain vices of the parents (drinking), repeated misunderstandings between parents and children can have negative influences on the victim.

Also, the teachers, the classmates know the situation of the individual, their situation in school, certain artistic preferences, places they frequent, their entourage, their spirit of collegiality.

The level of training, both physical and mental, and the data gathered from the workplace are very important because the workplace exerts a strong influence on the individual. Therefore, the behaviour of the person interrogated towards their colleagues, bosses, a high or low level of education, the failure to meet work requirements, tolerance of acts of misconduct, unexcused absences help outline a spiritual portrait of the person being interrogated in case of an offence.

These social microenvironments provide, in most cases, clear and accurate information about the personality of the individual to be heard and, moreover, can help clarify certain aspects of the way, the means and circumstances in which a criminal act was committed, the interest that person may have in the case, how they report/their attitude to a given situation.

Religion, health, sex, age, the economic factor, civilization, the repeated ingestion of various substances will result in certain particularities of the hearing (eg, the hearing of minors). Any deficiency, psychiatric disorder or illness may have the most various consequences on the behaviour of the person interviewed.

3. Phases of the Hearings in the Case of Crimes against Patrimony

3.1 The Preliminary Discussion Phase

The judicial body, after preparing the hearing and, sometimes, after drawing up a plan of the hearing, sets the date, time and place of the hearing.

The person's hearing will take place in compliance with the provisions of the article in the Romanian Criminal Procedure Code corresponding to their legal standing, after they were asked about their name, date and place of birth, their parents' full names, nationality, occupation, address, education, military situation, workplace.

At this stage, various open discussions on the most diverse topics (hobbies, work, movies, sports, music, extraprofessional activities) will be carried out, discussions that contribute to revealing the person interviewed and help in choosing a suitable tactics in relation to the person heard.

Preliminary discussions also have a part in establishing a first psychological contact between the investigator and the person examined. The judicial body will gain the trust of the person interrogated, and the latter will become less emotional, slightly relaxed, more self-assured in what they report. This will happen especially if, at this stage of the hearing, discussions are initiated on topics the person interviewed is comfortable with and feels happy to explain certain aspects that the investigator wants to understand better.

3.2 *The Phase of Free Reports*

In the phase of free reports, at the request of the judicial body, the person interviewed recounts everything he knows about the act, freely, in their own words. Of course, taking into account the legal standing of the person heard, he will provide information on elements constitutive of the crime in relation to which he is interrogated. For example:

Where was the movable representing the material object of the crime of theft, aggravated theft, robbery, abuse of trust, embezzlement, etc.

The nature of the material object of the crime in relation to which he is interrogated: identity, asset of an economic value, money, asset of the national patrimony, assets whose acquisition endangers the safety of persons, of lines of communication, assets of artistic, scientific, archivist value, oil or gas pipelines, high-voltage cables, etc.

The circumstances of place and time of the offence: during the night, in a public place, in a means of transportation, in a crowded place, in a dwelling or a shop.

If he was accompanied and by how many persons.

Who were those who accompanied him and how much they knew about what he was to do.

Data about the capacity of the persons accompanying him or how they were dressed when committing the offence: administrator, manager, owner, tenant, masked, in disguise, transvestite.

Data about the consequences the offence had: the damage caused, endangerment of life, health or physical integrity or benefits deriving from the crime, especially serious consequences, death of a person, etc.

The legal document showing the legal capacity of the person who owned the property in question.

How they entered the criminal field: escalade, burglary.

The means used during the crime: violence, hitting, explosion, appropriation, trafficking, destruction, damage, bringing in a state of disuse.

When they became aware of the criminal activity, and what they saw from that moment on.

What security and safety measures were taken, if it was the case, to reduce the risk of being victims of crimes against patrimony.

It is recommended that the investigator should not intervene in the free reports, except when he finds that the person interviewed has digressed too much from the problems of interest to the hearing (Suciu, 1972; Mircea, 2001).

To achieve its purpose, some rules of forensic tactics must be observed during the hearing, otherwise valid in any interview (Stancu, 2006):

The avoidance of any gesture, reaction or expression approving or rejecting the statements of the person heard;

Helping the person heard to tell the story, but without being suggestive, if the intellectual, cultural level of the person examined prevents him from making a coherent free account. Throughout this phase, the investigator will take notes of the more important aspects of the interview. There are situations where contradictions may occur in the statements of the person heard, or new aspects of the facts researched, other acts committed by the accused or defendant or that he witnessed or was victim of, and of which the judicial body had no knowledge, may arise.

The behaviour of the person heard while being interviewed, their verbal expressions and nonverbal behaviour help the investigator in assessing the statements of the person heard.

3.3 *The Phase of Questions and Answers*

The purpose of this phase in a person's hearing is to clarify certain situations related to the offence under investigation, especially when the statements of the person heard can be considered as insincere or the free accounts were not clear enough.

The actual content of the questions depends on the nature of the offence, the presence or absence of the person heard from the scene at the time of the offence, the consequences of the crime, the personality of the person heard and their state of health.

In the literature, there have been several classifications of the types of questions to address during the hearing of a person. Certain authors (Mircea, 2001) have divided the questions into three categories:

Questions clarifying situations prior to the offence, sometimes even the relationship between the victim and the offender.

Questions related to the time of committing the offence.

Questions needed to clarify what happened after the committing of the crime.

Other authors (Stancu, 1992) referred to the following types of questions to address in a hearing:

1. Complementary questions – are addressed in case the person heard reports less than what they actually observed.

This may be due to objective or subjective factors that can influence in a positive or negative way the statements of the injured person (Ciopraga, 1996). There are psychological and physiological factors (Bogdan, 1973; Suciuc, 1972) that may interfere in a positive or negative way with the obtaining of a statement. For example, the degree of adaptability of the body, the influence of toxic substances, age, previous experience, the mobility of thought processes, the intelligence of the person heard, their temperament and stable personality traits.

In addition to the factors noted above, perception may be influenced by external, environment factors, factors that contextualize perception, such as: conditions of time and place, the distance, the duration of perception, the complexity of the phenomenon, the concealment measures taken by the offender, the sequence of events in time.

2. Clarifying questions – addressing issues that were not clearly reported;

3. Helping questions – are designed to remove distortions such as substitutions or transformations;

4. Control questions – allow the checking of “the position of fidelity or dishonesty, adopted by the person interviewed” (Sandu, Bercheșan, 2000).

We propose our own classification of the questions to address in a hearing, that we consider as useful and welcome to the speciality literature from a criminal and forensic perspective, which is as follows:

Questions to determine the physical object of the offence.

Questions to obtain data on the active subject of the offence.

Questions to obtain data on the passive subject of the offence.

Questions meant to highlight and demonstrate the subjective side of the offence.

Questions related to the objective side, the material element of the offence.

Questions meant to highlight the motive and purpose of the offence.

Questions related to demonstrating a causal link between the action/inaction and the result produced.

The checking of the statements will be done using forensic methodology, by comparing statements with other pieces of evidence given in the case, by conducting criminal investigation activities (eg, hearing other categories of persons, reconstruction, forensic expertise, medico-legal expertise) and by carrying out other activities aside from those of the prosecution (such as collecting information to check the activities carried out by the person during the time they claimed to have been at the crime scene).

In this phase too, the questions must be formulated clearly, concisely, without becoming suggestive, without confusing the person interviewed, and the listening to responses must be done calmly, seriously, attentively, without any externalization of surprise or discontent.

The testimonies of the persons heard are recorded in the minutes drawn up during the hearing, on magnetic and/or video tape.

4. Conclusions

From a psychological and psychosocial perspective, the increasing crime rate requires the taking of precautions in order to avoid any risk of crimes against patrimony.

Negligence and indifference often lead to situations where people are exposed to various offences, due to a lack of measures for the safety of institutions or private property areas.

Credulity or influentiability, moods of isolation, frustration and complexity increase the risk of becoming victims or perpetrators of such crimes.

On the other hand, low economic conditions, both in terms of the opportunities offered by society at a given time and of the economic instability and insufficient state policies, lead to an increase in the number of this type of crimes – crimes against patrimony.

In investigating a crime, an important role is played by the hearing of the persons involved in such crimes. The success of a hearing depends on the thorough knowledge of the content of legal provisions and of the legal content of the offences under the Romanian Criminal Code, of the procedural rules for carrying out an investigation of the

offences under the Romanian Criminal Procedure Code, as well as of the rules of forensic tactics included in specialized guides and in internal procedures/rules applicable to the investigation of facts.

The degree of expertise knowledge in the field of psychology and verbal and nonverbal communication will influence the course of the investigation in a positive or negative way.

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