

THE PSYCHOLOGY OF HEARING THE SUSPECT OR DEFENDANT

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***Abstract:** Antisocial deeds are the natural product of people's relationships, they could be considered inhuman and immoral independently of any judicial decision. Yet, they cannot be considered misdemeanour unless the law sees them as illicit and sanctions them with punishments.*

***Keywords:** defendant, hearings, psychology, legislation*

1. INTRODUCTION

Antisocial deeds are the natural product of people's relationships, they could be considered inhuman and immoral independently of any judicial decision. Yet, they cannot be considered misdemeanour unless the law sees them as illicit and sanctions them with punishments.

Romania is a constitutional, democratic and social state, in which its citizens benefit from the rights and liberties established by the Constitution or other laws, but also obey the obligations stipulated by them, being equal in the eye of the law and the public authorities without privileges and discrimination. Respecting the Constitution, its supremacy and the laws is compulsory, and that is why Romanian citizens, foreign citizens and stateless persons must exert their rights and liberties in good faith and in a way that does not defy other people's rights and liberties.

Respecting these requirements imposes the establishment of precepts in a well-determined legal framework that sets up the content of the different branches of law. Breaking such precepts imposes sanctions stipulated by the law, intervention that can only take place through the performance of certain activities by the empowered bodies.

The criminal proceedings cannot be set in motion impersonally, but it must target a specific person. Generally, criminal cases begin being resolved by carrying out important research in identifying the culprit and the victim, followed by the collection of evidence and findings, and in case there are sufficient reasons to believe a person committed a crime that is the object of a criminal case, they can send this person to trial.

The development of the criminal case confers the criminal different procedural qualities, each with its distinctive legal significance, so the active subject of the crime will have certain rights and obligations that they are going to exert or bear during the procedural activity.

The declarations of the suspect or defendant are a means by which evidence is obtained in the criminal case. Evidence has no pre-established value by law and is bent to the free judgement of judicial bodies following the evaluation of all administrative evidence. The court takes a motivated decision on the existence of the crime and the guilt of the defendant by considering all the evidence. The conviction is ruled only when the court is convinced that the accusation has been proved beyond any reasonable doubt. From this point of view, the rules of criminal procedure give a relative value to the declarations by adopting a middle solution, in the sense that they can serve to find the truth only if corroborated with facts and circumstances ensuing from all the evidence. In other words, these declarations are not probative taken separately from the other evidence. A conviction solution cannot be based exclusively on the recognition of the suspect or defendant. In order to find the truth, the prosecution body is obliged to gather evidence in favour and against the defendant, even if he/she admits having committed the crime.

Compulsory subject for finalising the procedural activity by their honest declarations, the suspect or defendant contributes to the just resolution of the case, the judicial bodies having the possibility to establish with accuracy the circumstances under which the crime was committed.

2. THE PSYCHOLOGY OF HEARING THE SUSPECT OR DEFENDANT

The hearing is one of the most complex and troublesome activities for the judicial body, activity whose efficiency is based on intelligence, finesse, insight, ability and patience on the part of the person in charge of carrying it out – traits that can be acquired only through thorough training.

The hearing brings the two terms of this activity on different positions: the suspect or defendant and the judicial body who do not cooperate but confront.

The investigator must have contact intelligence with those under investigation; they must be aware at all moments that the way they are perceived by the suspect or defendant will weigh decisively in the success of the criminal investigation activity.

The judicial body must adopt a detached attitude from the procedural position, an impartial attitude in the rational assessment of the facts supporting the accusation and those advocating in favour of the suspect or defendant.

An experienced magistrate, conversant with the psychology of the suspect or defendant, can grasp with enough accuracy the difficult moments of increase in psychological tension in the case of dishonest persons.

Simulation or dissimulation attempts shape an important group of psychological problems, together with the typical emotions felt during the interrogation.

The characteristic element of the offenders' psychology after having committed the crime is the tendency to defend themselves, to avoid the accusation and sanction at any cost. This dominates their psychological activity, being a permanent prime preoccupation that entails their behaviour.¹

The psychology of the offender, that determines their behaviour, is often strongly influenced by the impression the investigator leaves, which, in its turn, is determined by their behaviour. If the investigator leaves the impression that he/she is superior, objective, well-grounded and highly ethical, the offender will incline to better tell the truth, since he/she is certain that everything will transpire. If, on the contrary, the impression is that the investigator is superficial, unprepared, unreliable and impartial, the result is inversed.

After having committed something illicit, most offenders can suffer from a state of psychological tension, other than the pre-crime tension, more or less obvious and determined by fear of being discovered, which motivates the individual's depressive mode. The psychological processes specific of this moment generate anxiety, hesitation, and an unnatural behaviour.

Under such circumstances, the judicial body must not forget that the same objective and subjective factors influencing the perception of a witness can also influence the perception of the suspect or defendant: unfavourable visibility conditions, short time in which the crime was committed, psychological tension that disturbs the perceptive process, malfunction of the senses; memory and rendering conditions, different from person to person especially during the criminal investigation, cannot be dismissed either.

When interrogating the suspect or defendant, the personality of the magistrate, the other lawyers or investigation bodies, asked to find out the truth and give a sound and legal solution in a certain criminal case, plays an important role.

During the hearing, as well as during the entire period of a criminal case investigation, the investigator is obliged to be correct, patient, dignified, and understanding. He must have the strength to admit to and control certain personality traits that might reflect negatively on the investigations, like temper, superficiality, hardness, self-partiality, exaggeration, suspiciousness towards any examined person, regardless of their quality. To this end, it is useful to remind you that, including during the interrogation, we can have a response according to how we treat people. A negative behaviour leads to negative results.²

¹ Tudorel Butoi, *Interogatoriul - psihologia confruntării în procesul judiciar* (Interrogation – the psychology of the confrontation in the judicial procedure), Editura Pinguin Book, București, 2004, p. 131;

² Tudorel Butoi, *Interogatoriul - psihologia confruntării în procesul judiciar* (Interrogation – the psychology of the confrontation in the judicial procedure), Editura Pinguin Book, București, 2004, P. 133.

3. CONCLUSION

If the investigator will not succeed in ensuring a „perfectly flat psychological ground" and, by his/her negative behaviour faces the interlocutor like a susceptible, hot-tempered, aggressive person, then the general framework of the investigation will become precarious, while the chances of meeting the proposed goals will diminish. The emotional balance of the investigator is also dependant on the lack of any preconception or hatred towards the investigated person.

The investigation brings forward certain hardness, being stud with obstacles, turn of events, odd coincidences that push the investigator's intelligence, capability and psychological resistance to the extreme.³

NOTE ON THE AUTHOR

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³www.unibuc.ro/studies/Doctorate2006/MarianaGhena/TacticaAscultariiMartorilorsiaInvinuituluiinProcesulPenal;