ELEMENTS OF FORENSIC TACTICS REGARDING THE REPRESENTATION OF THE PUBLIC PROSECUTION IN COURT

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ABSTRACT*: The complex and responsible activity of the prosecutor in the criminal trial ends by representing the public (state) prosecution before the court. The judicial process is carried out on the basis of the adversarial principle. Although the procedural aspects of the state prosecutor's activity in court were thoroughly investigated in specialized sources, the tactics of representing the prosecution did not exhaust their scientific and practical value and interest. In a special light, certain forensic procedures and methods are required, mirrored mainly for the preliminary phase, with application by the prosecutor in order to prove the accusation in court. This paper focuses on the identification and analysis of hypotheses to justify the need to apply the elements of forensic tactics to the representation of the public prosecution by the prosecutor in court. Thus, it was argued the need to adapt and apply in new conditions, adversarial ones, the elements of forensic tactics in the activity of the prosecutor at each stage of the trial of the criminal case: at the preliminary hearing, during the preparatory part of the hearing, at the judicial investigation and judicial debates. The proactivity of the prosecutor at the trial stage will depend primarily on the knowledge the prosecutor possesses about the tactics of presenting evidence and the ability to interpret it in favor of the prosecution. If he does not have the necessary professional skills, the prosecutor will encounter serious difficulties in the adversarial trial. However, in the present study certain aspects of forensic tactics are analyzed, which ensure a good quality of representation by the prosecutor of the public prosecution at the trial stage.*

KEYWORDS: *prosecutor, prosecution, forensic tactics, trial phase, procedure, defendant, investigation, evidence, adversarial proceedings, examination, planning, tactical procedure, procedural order, judicial speech, indictment, legal classification, version, complexity.*

INTRODUCTION

The accusation is an indispensable element, an attribute of any judicial procedure, regardless of its type and form. Although the legal essence and the procedural consequences it generates are not always the same. These were substantially reduced in the inquisitorial procedure, where the accused was in the situation of an object of investigation deprived of rights, the limits of his criminal liability not being determined, and the sentence of the court containing everything that was found by the investigation. The legal importance of the accusation becomes increased in the adversarial procedure. Here the accusation is the main element of the entire criminal case and a constant criterion of the defendant's liability before the court [1, pp. 72-73].

The accusation presupposes, first of all, a certain activity. From the etymological point of view, *to accuse* means to take certain actions regarding a person, to prove his guilt in violating the norms of behavior, to expose him in an illegal reprehensible deed [2, p. 197]. Since the criminal procedure is always only about antisocial deeds - about crimes, by accusation is designated the procedural activity strictly regulated by law in order to unveil the perpetrator.

Forensics is the autonomous and unitary science that develops technical and scientific means and methods, as well as tactical procedures for discovery, recording, collection, examination and interpretation of evidence, expert examinations, technical and scientific, and forensic findings, in order to prevent and discover prejudicial deeds, identify the perpetrators and manage the evidence necessary to find out the truth and to apply the law correctly in each case.

During its evolution, forensic science has been mainly developed in order to ensure the accomplishment of the tasks of criminal prosecution, in general, and of criminal

prosecution actions, in particular. With the democratization of the criminal procedure regulatory framework, the criminal proceedings in their public, decisive phase - the trial - are built as an adversarial process, which means that:

- the prosecutor has the quality of state accuser and represents the accusation in the court, but he does not solve the case. Resolving the issue of the guilt of the defendant is the prerogative of the court, which acts exclusively as a body of justice;

- the state prosecutor and the defendant plead in the trial as parties, ie as such participants, who have a certain procedural interest and to whom the law gave equal rights to prove their own statements and challenge the arguments of the other (of the opposing party);

- the court is not dependent on the positions of the parties, it is obliged to base its decision only on those evidence to which all parties had equal access and to motivate in the decision the admissibility or inadmissibility of all evidence administered (art. 101 para. (4) CPC RM). The court provides assistance to any party, at its request, under the Criminal Procedure Code, for the administration of the necessary evidence (art. 24 para. (4) CPC RM), the court analyzes in all aspects the evidence presented by the parties, based on which it rules the decision.

I. APPLICATION OF FORENSIC TACTICS TO THE PRESENTATION BY THE PROSECUTOR OF THE ACCUSATION IN ADVERSARIAL CONDITIONS

In the stated situation, the need to adapt and apply in new, adversarial conditions, the elements of forensic tactics to the representation by the prosecutor of the public prosecution in court is limited.

According to the explanatory dictionary of Romanian language [3], tactics means *part of the military art that deals with the study, organization, preparation and conduct of combat. The science of determining the means and forms of action, in a relatively short period, for the achievement of the objectives of a social movement, of a political party, etc., according to the socio-political circumstances of that period,* is also considered*;* or *the means used by someone to make an enterprise, an action, etc. succeed.*

Forensic tactics, as a component of forensic science, is considered [4, pp. 291-292] "a system of general theses and specific scientifically argued procedures, based on the provisions of the criminal procedure law and jurisprudence, the application of which aims to ensure the effectiveness of the bodies during the investigation of criminal deeds and their examination in court, taking into account the peculiarities and situations in which the crime was committed".

Forensic tactics consist of tactical decisions, tactical procedures, tactical operations and tactical combinations, which are based on data obtained in the investigation of the specific case [4, p. 292], used effectively in the development of forensic versions, organizing the presentation of evidence in judicial investigation, planning and applying certain tactical procedures to the administration of the respective evidence, the need to interact with other subjects of the accusation, etc.

For these reasons, the stages of the prosecutor's presentation of the accusation are of particular importance. Conventionally they can be divided into preparation stages for:

1) Participation in the preliminary hearing;
2) Participation in the preparatory part of the court hearing;
3) Participation in judicial investigation;
4) Participation in judicial debates;
5) Participation in the appellate court.

The stated systemic elements will be applied to each of the listed stages. Thus, at the stage of preparation for participation in the court hearing, of particular importance is the planning, forecasting of the judicial situations, the interaction with the criminal investigation officer, the prosecutor who led or exercised the criminal investigation, etc.The tactical procedures applied by the State Prosecutor during the preliminary hearing, the preparatory part and the judicial investigation will differ significantly by virtue of the fact that each of them has distinct

purposes and procedural rules. In fact, the tactical procedures will differ also according to the procedural order of judging the case, will it be a general or a summary procedure.

II. PREPARATION OF THE PROSECUTOR FOR PARTICIPATING IN THE JUDGMENT OF THE CASE

The preparation of the prosecutor for participating in the judgement of the case consists in performing several consecutive actions:

1) detailed knowledge of the procedural attributions at the trial phase and methodical training;

2) studying the materials of the file and the specific conditions of the crime;

3) preparation of notes on the studied materials;

4) the study of legislation, doctrine and judicial practice;

5) preparation of the judicial speech;

6) elaboration of the plan for participation in the court hearing.

It should be emphasized that each of the mentioned activities has its particularities, corresponding to a certain stage of preparation, which allows their inclusion in the object of a special investigation, called to evoke the essence of the actions performed by the prosecutors and considering their procedural responsibilities at the corresponding stage.

As a rule, knowledge of the procedural legislation and the methodology for studying the case is the initial step in the training of prosecutors who exercise the activity of prosecution in court. For an experienced prosecutor, this step is not mandatory, but it must be considered that often the duties of the prosecutor in court are performed by novice prosecutors, who work in the prosecutor's offices for a short time, which is why they cannot avoid the step. In the same measure, the thesis is valid for those prosecutors who plead very rarely in court, fulfilling other duties. It is also necessary for them to refresh their knowledge of the procedure, the methodology of studying the file and the preparation of the notes.

Careful study of the materials of the criminal case is the basic condition, which ensures the active role of the state accuser in the court hearing. The idea that one can get into the background of the accusation even during the trial is deeply wrong and, as a rule, leads to the inability of the prosecutors to perform their functional tasks effectively.

The preparation of the prosecutors to participate in the trial of the case must be seen as an independent stage of the activity and from the perspective of:

1) elucidation of the accusation as the main object of the trial (art. 325 para. (1) CPC RM);

2) studying and assessing the quality and sufficiency of the evidence administered at the stage of the criminal investigation;

3) detecting the gaps and contradictions existing in the case materials;

4) verifying the observance of the legality of the criminal investigation.

It is proposed to start studying the criminal investigation materials in the following sequence:

1. *Formulation of the accusation*. Here it is clarified the existence of the criminal deed of which the defendant is accused, if this deed contains the component elements of a crime and by which criminal norm it is prohibited; the presence of the elements of the objective side of the criminal component, in particular, it is necessary to verify whether the time, place, mode, object of the attack and the harmful consequences have been established, as well as to determine whether the appropriate qualifying indices are contained; whether the deed is committed by the defendant with guilt, out of intent or reckless, the purpose and motive of the crime and their influence on the application of the criminal law norm; the presence of aggravating and mitigating circumstances, which influence the degree of guilt and liability of the defendant, characterizes his personality, the existence of data about the injured party, whether they determine the illegality of the deed or constitute qualifying evidence; the material damage caused by the crime and the measures taken to repair it, the influence of the magnitude of the damage on the classification of the deed.

2. *Legal classification*. It specifies the content of the criminal norm on the basis of which the crime is framed and the norms from the general part of the criminal law which regulate the notion of crime, stages of criminal activity, participation in crime, content and form of guilt, modalities of criminal punishment and grounds for their application, exemption from criminal liability and punishment, the rules of civil law, and in some cases - of labor law, which governs material liability. The elucidation of the listed issues will allow a better understanding of the legal conclusions made in the indictment.

3. *The causes and conditions* that contributed to the commission of the crime and the measures taken to eliminate them.

4. *Observance of the legal provisions during the investigation,* which regulates the competence of the criminal body; connecting and disjoining criminal cases; the opportunity to prosecute and interrogate the accused regarding the facts incriminated in the ordinance and indictment; prevention of witnesses about possible criminal liability in case of evading from giving statements and for intentionally false statements, observance of the rules for interviewing them; compliance with the rules for commissioning the expert examinations and, in this connection, the rights of the parties; compliance with the rules of search and seizure of objects, on-the-spot investigation and body examination; performance of all procedural norms regarding the recording and keeping of corpus delicti; the legality of removing persons from criminal prosecution or cessation of criminal prosecution; presentation of the materials of the criminal case to the parties on the occasion of the completion of the criminal investigation; examination and fairness of the settlement of the requests of the accused and of his defense counsel; handing over the indictment, etc.

Carrying out the stage of studying the criminal investigation materials, of the preliminary assessment of the administered evidence, it is reached the conclusion about the sufficiency of the accumulated evidence for proving the accusation in court; the gaps of the criminal investigation are detected and the ways of their omission are drawn; derogations from the rules of procedure are brought to light and, depending on their gravity, it is decided in advance what measures should be taken in this regard.

The study of the materials in the file is accompanied by the elaboration of certain notes. The necessity of their elaboration is determined by the major importance they have for the clarification of the formulated accusation and of the entire evidentiary material, administered in the file; with the help of the notes, the accusers can orient themselves more easily during the judicial hearing in the issues that will be the object of the investigation and to exercise their activity in order to unveil the defendant; the notes drawn up in advance according to a certain system substantially facilitate the preparation of the prosecutor for the judicial debates; they are extremely necessary for the accuser to draw up the plan for his participation in all stages of the court hearing.

The stage of prosecutor getting prepared ends with the elaboration of a program (plan) in order to participate in the trial of the case.

III. PLAN OF THE PROSECUTOR'S PARTICIPATION IN THE TRIAL

The plan of the prosecutor's participation in the trial largely depends on the peculiarities of the case, on the merits, the completeness and the objectivity of the investigation carried out, reason for which a certain form with a determined set of issues cannot be recommended. It is certain that the peculiarities of the specific accusation are reflected here, it contains the need to eliminate the gaps detected during the study of the case, the order of the judicial investigation is proposed and, if necessary, the presentation of additional evidence. All these have their specific individuality in each file. In this order of ideas, we consider it timely to determine only the most frequent variants of plans, attested in the judicial practice, which refer to the defects of the accusation formulation, to its legal classification and to the degree of argumentation.

1. *The accusation is formulated correctly and all the elements of the*

formulation are reflected and each of them is confirmed through the evidence reflected in the materials of the file. In such cases, the prosecutors must place the following tasks: in the preparatory part - ensuring the presence of defendants, witnesses and other sources, from which evidence was obtained; in the judicial investigation – confirming the accusation by demonstrating the evidence contained in the file and convincing the court of the justice of the accusation and of the need to apply the criminal punishment towards the defendant.

2. *The accusation is wrong or incomplete and insufficiently proven by the evidence administered*. In this sense, the accusation will be modified and the list of additional evidence to be presented will be concretized. If essential contradictions have been discovered in the statements made during the criminal investigation, the persons subject to confrontation and the questions to which an answer is required are considered.

3. *The wording of the accusation is correct and all the elements are fully reflected in it, but the legal classification or the incomplete wording proved to be incorrect and led to a wrong classification*. In both cases, depending on the nature of the gaps, it is necessary to establish where, when and how these data can be further clarified during the judicial investigation and, depending on the results, to make the decision. In the first case, if there is a need to apply any part or article of the Criminal Code, which provides for a greater liability, then, according to art. 326 CPC RM, the prosecutor who participates in the examination of the criminal case, by his ordinance, has the right to modify the accusation submitted at the criminal investigation.

4. *The wording of the accusation and the legal classification are correct, but the defendant admits his guilt only partially or, in general, rejects the accusation*. In this situation, in order to participate in the court hearing, it is necessary to provide clarification of the arguments brought by the defendant for contesting part or all of the accusation and to ensure the absolute investigation of all the evidence of the accusation.

IV. THE JUDICIAL INVESTIGATION AND THE ORDER OF EXAMINATION OF EVIDENCE

With reference to the judicial investigation, the competent establishment of the administration procedure has an organizational and tactical importance [5, pp. 47-48]. It determines the correct course of the judicial investigation, its rational development, with a minimal loss of time of the judicial bodies, the parties and the persons summoned to court.

Considering that art. 365 CPC RM gives preference to the examination of evidence presented by the accusing party, the prosecutor must recommend to the court a scientifically substantiated examination order to ensure the elucidation of all essential circumstances of the case, filling any gaps in the prosecution, objective and complete investigation of evidence and individualization of the guilt of each defendant.

The order of examination of the evidence is determined by multiple factors, which the state prosecutor is obliged to know and know how to analyze, so that, applying them to the specific criminal case he can propose the only fair solution. Among them are:

1) the versions proposed by the prosecutor;

2) the full, partial recognition or denial by the defendant of his guilt;

3) the prejudicial character and degree of the crime;

4) the volume and complexity of the criminal case;

5) the number of defendants and the existence of contradictions in their statements;

6) the age of the defendants;

7) the position of the injured parties;

8) the quality of the criminal investigation.

This range is not exhaustive and can be continued.

During the study of the materials from the criminal case, the prosecutor analyzes different versions. One of them is set out in the indictment. Given that the versions can only be verified under the conditions of the

judicial investigation, the state prosecutor must propose an optimal procedure for examining the evidence of the most plausible version. If the proposal has been accepted by the court, it will be easier for the accuser to achieve his goals.

In one opinion [6, p. 22] it was shown that the factor of the defendant acknowledging or denying his guilt may influence the position of the prosecutor in this matter. But we cannot establish a direct dependence between the position of the defense and the procedure of investigating the evidence. Quite often, both in the case of the admission of guilt and its denial, the judicial investigation begins with the interrogation of the defendant. In court proceedings this is the usual procedure for investigating evidence, which has its advantages and that is why the prosecutor is interested in applying it in the trial. The interrogation of the defendant allows the establishment of all the circumstances of the case, the details that were not reflected in the criminal investigation, the clarification of the version of the defense and its vulnerable sides. The information obtained as a result of the interrogation may be used to interviewing the injured party and witnesses. It helps the prosecutor to choose the optimal tactical procedures for unveiling the defendant in committing the crime. The categorical proposal to start the judicial investigation with interviewing the injured party and witnesses, if the defendant does not admit his guilt, in our opinion, is wrong, because there is a danger of consolidating the position of the defendant, who, knowing about the existing data against him, will navigate well and will find opportunities to deny them. Such a situation offers some advantages to the defense over the prosecution. It is opportune, however, sometimes to begin the investigation of the evidence with interviewing the injured party and witnesses, this would be if the defendant has partially admitted his guilt, when he does not hide the basic circumstances of the crime, but tries to present his behavior in a more favorable light, to attenuate some facts. In these situations, examining the evidence that exposes him can lead him to plead guilty. The defendant will not resist during the interrogation, will not distort the truth to mitigate his guilt, which will have an impact on the conduct of the trial. Opinions against this order of judicial investigation have also been presented in the specialized literature [7, p. 123]. The main argument is that the interrogation of the defendant at the end of the judicial investigation will considerably reduce his means of defense: during the interview of the injured party and witnesses, the defendant cannot give full explanations regarding the accusation, but only some parts of it or circumstances, while complete explanations he will be able to give only after examining all the evidence that unveil him. In this way, the defense is placed in an unfavorable situation and the court will not be able, at the beginning of the judicial investigation, to make a clear picture of the essence of the arguments brought by the defendant to deny the accusation, and then, during the investigation, to check their certainty and strength.

In cases with a plurality of accusations, where there are several defendants and they have different attitudes towards the accusation brought, we consider it best to start interrogating the defendants who have admitted all or part of their guilt, and then - those who deny guilt. The prejudicial nature and degree of the deed may also influence the establishment of the order of evidence investigation. Component elements of the crime can be revealed, in which the interviewees change their testimonies quite often. This refers to extortion, crimes committed in unobvious conditions, sexual crimes, etc.

The planning of the trial order depends on both the number of defendants and the complexity of the case.

In cases with many episodes, several variants of evidence investigation are possible: 1) the evidence for each episode is investigated; 2) the defendants and witnesses are interviewed on each episode, and the rest of the evidence is examined without being divided into episodes; 3) only some defendants are interrogated on some episodes, and the other means of proof are concretized in relation to each defendant [8, pp. 179-185].

The first option is rarely found in the practice of prosecutors, because it is not sufficiently advantageous. Only one witness may testify in several episodes, and it is not reasonable for his testimony to be dismembered at the hearing. The same problems may arise if the second evidence investigation option is chosen. More often, the third algorithm is applied, but the fact that the interrogation on episodes dismantles the defendant's testimony makes this variant not efficient enough. The most rational and applicable in the practice of supporting the accusation, in our view, would be: the defendants are interrogated consecutively regarding the incriminated facts and episodes, and the rest of the evidence is investigated in particular for each one. The proposed order offers the possibility, on the one hand, to ensure the systematization of the information obtained, and on the other hand - not to interrupt the investigation of evidence in time. When establishing the order of investigation of evidence in cases with many episodes, the prosecutor must decide in what order it is rational to investigate them: in chronological order, by the degree of social danger or by the probative degree.

Another key factor is the weight of the indictment evidence and the quality of the criminal investigation. If the investigation was carried out at a low level, a fact found at the stage of studying the materials of the criminal case, it is appropriate, after interrogating the defendant, to propose the investigation of evidence on which there is no illegality of administration, and then of those that need to be checked very thoroughly, removing the shortcomings found.

CONCLUSIONS

The tactics of representing the public prosecution in court is the algorithm of actions released by scientific forensic recommendations and determined by the position of the prosecutor in the criminal case, which seeks to convince the court of the legality and validity of the indictment.

Viewed from a structural point of view, it consists of the general part, which includes the notion, the tasks, the system of public prosecution tactics; planning the activity of the state prosecutor during the preliminary hearing, during the preparatory part of the court hearing, during the judicial investigation and during the judicial debates; conceptions regarding judicial situations, forensic forecasting; the forms and methods of the interaction of the state prosecutor with the criminal prosecution officer, as the case may be, with the prosecutor who conducted the criminal prosecution or exercised the criminal investigation in question; the system of tactical procedures, tactical solutions and tactical combinations in the activity of the state prosecutor. The special part includes the tactics of the participation of the state prosecutor in the judicial actions, namely: in the judicial hearing; when examining corpus delicti; when investigating the documents and the reports of the procedural actions; at the commissioning by the court to carry out the forensic examination and to hear the expert in the court hearing and in other court actions.

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