Abstract: The author focuses on the activity of witness interrogation during a criminal case. Currently, making statements by a witness is treated as one of the most important parts of the preparatory proceeding. The article presents the ways in which an interrogation should be carried out. The article is based on books and documents deriving from many eminent police officers, public prosecutors and criminologists. The aims of the paper are as follows: outlining the rights and obligations of a witness in a criminal proceeding; description of procedures during questioning; drawing attention do the process of verifying statements. Key words: interrogation, investigation, methods, tactics, statement verification, witness.

Aims of interrogation

In accordance with the provisions contained in the code of criminal procedure the preparatory proceeding is the first stage of criminal proceedings. It is characterized by two functions: preparatory, consisting in collecting and preserving evidence, necessary to draw up a substantial final decision and preventive, consisting in preventing crimes.

The first goal set before the preparatory proceeding is demonstrating whether the offense was committed and whether it is a criminal offense. Then the offender needs to be found and his personal-recognition details determined. In addition, a comprehensive explanation of the circumstances of the case is required, as well
as collecting, securing and preserving evidence for the court, so that the ruling can be made at the first hearing.

Among the procedural activities for collecting and preserving evidence the questioning of the witness should be distinguished as one of the most important. This happens, because the witness’ statements in the process of the preparatory proceeding as personal means of evidence have a specific role in the course of the criminal proceeding. According to Marek Cieślak, questioning the witness is a procedural step which consists in the authority leading the proceeding obtaining statements from the witness with regard to the circumstances which are of particular importance for the criminal case.

In the vast majority of criminal cases, witness testimonies constitute the strength of the evidence collected, allowing to determine the circumstances of the occurred event, as well as often providing information to law enforcement about the offender himself. The information acquired in the course of the questioning are quite often essential instructions to take further investigative steps, and the testimonies given by the witness become an important link in the chain of evidence.

The participants in interrogation activities are the interrogator receiving the testimony and the witness providing the testimony. According to social psychology, questioning is treated as a process of interpersonal communication, because there is mutual interaction and communication of information between the interrogator and the witness, both verbal and non-verbal. This results in the opinion that the course of the questioning and its final effect is influenced by the two sides participating in it. Therefore, an important role is played by their mutual evaluation, attitude, mental state, expectations and goals that each side wants to achieve.

The primary objective of the interrogator is considered obtaining as much accurate and reliable information about the event as possible. The objectives which motivate the witness are no longer as clear as in the case of the interrogator. His purpose can be, for example, deliberately misleading the interrogator by testifying untruths or withholding them, which will direct the conducted proceedings on the wrong track. The problem may also be an indifferent witness testimony, which brings nothing of value to the case.

The correctness of the implementation of interrogation steps, whether or not it brings the intended effect by obtaining real and consistent information, is influenced by many factors associated with the compliance with the rules contained in the code of criminal procedure, but also the tactics of conducting an interrogation. The basic requirements in relation to the officer conducting this process are,

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3 Ibidem.
in addition to broad knowledge of criminal proceedings, flexibility, divisibility of attention and attention to detail, as well as basic knowledge of psychology and forensics. These elements intertwine with varying severity at different stages of the preparatory proceeding\(^5\).

Bearing in mind the criminology output, which deals with issues related to the witness questioning, tactics and stages of questioning the witness are mentioned. Tactics is understood as ways, methods and means used to achieve the intended purpose. Therefore, the notion of tactics of questioning includes not only a general set of guidelines and related activities (how to conduct interrogation), but also the previous procedures, which should be carried out prior to the activity, e.g. getting familiar with established details on the offense committed or collecting information about a witness before his questioning\(^6\).

Conducting questioning while observing the rules imposed by the code of criminal procedure results in the possibility to obtain valid evidence in the ongoing investigation. All rights of the interrogated person must be observed, including the provisions under article 171 of the code of criminal procedure, which is primarily about ensuring his freedom of speech. Similarly, it is not allowed to influence the testimonies of the witness by means of coercion or unlawful threat, or the use of hypnosis, chemical substances or technical measures affecting the mental processes of the interrogated person, or aiming to control his unconscious behaviours in relation to participating in the questioning. The rights entitled to the witness are treated by lawyers as a guarantee for the protection of interests of the person testifying, thus reinforcing the value of evidence coming from the testimony, therefore, it is also required that they are respected from the beginning to the end of this process\(^7\).

As it has already been said, knowledge on the accumulated evidence material along with the conscientious preparation of interrogation plan is one of the conditions for the effective implementation of the previously established purpose. This has its specific justification, because next to preparations on the part of the procedural authority, one should also bear in mind that the witness directly involved in a case, if for some reason has opposing interests in relation to the interrogating officer of the procedural authority, will certainly prepare himself in terms of his own tactics and content of the submitted testimonies. For each interrogation, a protocol of this activity must be drawn up. Optionally, a stenographic report may be drawn up and audio and image recording using special recording equipment\(^8\).

\(^5\) Ibidem, p. 77.
\(^8\) Ibidem, p. 109.
Interrogation as a process, in addition to fulfilling the conditions resulting from the provisions of the criminal code, is also to fulfil tactical and psychological methods of obtaining information. The consequence of this requirement is the division of the questioning into stages, while due to the degree of detail, in practice different naming of particular phases functions, which is a result of transferring emphasis from psychological elements on process elements, and vice versa.

Phases of questioning a witness

Commonly, the most complete division of questioning phases is considered to be that proposed by Tadeusz Hanausek. The author distinguished five stages: the orientation-reconnaissance phase, phase of preliminary activities, phase of free speech, phase of questions and answers, and final activities.

Relaxed conversation, alternatively called the orientation-reconnaissance stage, should always precede questioning activities. At this stage, the interrogators should ask the witness for his name and surname, while this is not to serve checking personal details, and only introducing each other. Then there is a relaxed and casual conversation, during which the witness should not guess at its meaning and purpose. In this way, interrogators have the ability to obtain basic personal-recognition knowledge about his interlocutor. In carrying out this conversation, the interrogator studies the interlocutor and thus acquires valuable knowledge about the personality of the witness, his level of intelligence, temperament, psychophysical condition, excluding or confirming the necessity to question him with the participation of an expert psychologist or psychiatrist in the event of the appearance of symptoms indicating an impaired mental state. It is also necessary to determine whether the chosen tactics of conducting interrogation suits the witness, as well as creating the right atmosphere that will enable a smooth transition and implementation of the next stages of the questioning. In addition to providing the atmosphere, the interrogator should also observe the behaviour of the witness, noting his symptoms of mental reactions, emotions and the level of nervousness. The stage of free speech is not formally considered part of the interrogation process, which arises from the content of articles 190 and 191 of the code of criminal procedure, as the actual interrogation begins from asking the witness for his name and surname, age, occupation, place of residence, punishment for false testimony or prosecution and the relationship to the parties. The interrogator should also at this stage, by drawing up a formal part of the protocol, register the document on the basis of which the identity of the person providing the testimony

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is established. In this way, the formal interrogation begins the stage of preliminary activities, which includes informing the witness about punishment for false testimony or withholding the truth. The interrogator also informs the witness, in the event of such indications occurring, of his rights arising from articles 182, 183 and 185 of the code of criminal procedure, listing the circumstances that give grounds for refusing to testify or repealing from answering particular questions, or also to submit an application for exemption from the obligation to testify or answer questions. The interrogators also informs the witness of the possibility to reserve his details concerning his place of residence only for the public prosecutor’s office or court, in a situation if there is a well-founded fear of violence or unlawful threats of the witness or a person close to him. This type of privilege in practice is a so-called “small incognito witness”\(^\text{11}\).

Upon completing preliminary activities, the phase of spontaneous testimony begins. During this time, the procedural authority is to enable the witness to speak freely within the limits of the purpose of the given activity. Often this step is begun with posing a general question: does the witness know what he was called in for and what does he know about the specific event? In practice, the witness conducts a free monologue recounting without interruption about the given event. The interrogator can interrupt the witness statement only if the statement of the witness substantially deviates from the topic. However, the interrogator should do this tactfully and calmly, in order to direct the testimony on the right track without interfering too much. Minutes of the casual statements of the witness should not be taken, as this may cause it to become less spontaneous and more careful. The awareness of the witness that what he is saying is noted down, inclines him to dictate and speak slowly, and this gives one time to think, think about what to say and discreetly pass over in silence dubious and ambiguous circumstances. The doctrine of criminology advises the interrogator to make brief notes in the form of sentence equivalents, as if casually, thus creating the appearance that what the witness is saying is not recorded exactly. In accordance with the principle that the best listeners are also the best interrogators, the witness must be stimulated to give the most detailed and comprehensive description of the event of interest as possible, while creating the possibility of a situation occurring in which the witness will testify to more than he would like to say. Carefully listening to the version of the person who has been provided the opportunity to comment freely quite often gives the possibility to penetrate deeper into its interior, interest, mood\(^\text{12}\). In the next stage this will result in the construction of precise questions, aimed at explaining the vague issues, which the witness did not expect to be asked\(^\text{13}\).

\(^{11}\) E. Gruza, op. cit., p. 212.


\(^{13}\) E. Gruza, op. cit., p. 213.
The stage of asking questions is another phase of the interrogation, which is a completion, explanation and control of what was said by the witness at the stage of free expression. The code of criminal procedure lists the above three types of questions concerning the carrying out of the subject activity with the reservation that it is unacceptable for interrogators to ask questions that suggest the witness answers. Enriching the content conveyed during a casual account is the aim which asking supplementary questions is to serve. While asking explanatory questions is to provide the fullest possible knowledge of the events and people involved in them, their behaviour and accompanying circumstances. Explanatory questions serve, first and foremost, the clarification of information obtained from free expression. The purpose of the control questions, as the last listed in the code of criminal procedure, is to verify the sincerity of the person testifying before the procedural authority. Sometimes they can also examine the information obtained from other sources or check the correct understanding of the witness statement.

Bearing in mind the effectiveness and evidence value of the witness interrogation, also the method of formulating and asking questions to the witness is a very important element. The question should be understood, as short as possible and refer to a specific case. This guarantees that the witness will concentrate on providing the asked question, and not on decoding its intricate content. The officer of the authority conducting the interrogation should avoid ambiguous terms, containing a large emotional load and ambiguous words. Furthermore, the language and vocabulary should be adjusted to the intellectual level of the witness, bearing in mind that it is best to choose terms widely considered as colloquial. The order of asking questions is also significant. Guided by the directives “from the general to the details” and “from the known to the unknown”, the interrogator should first ask questions that are the most interesting from his point of view. The rate at which they are asked is another element, which an investigator should pay attention to when questioning. When the witness has a problem with understanding the question and answering it, it should just be done more slowly. If this does not bring the desired effect, it seems logical to transform the posed question into a simple interrogative sentence, which will not cause the witness trouble in understanding and answering.

The phase closing the interrogation is final activities. At this stage, the interrogator ascertains whether the questioning is complete and that there is no need to complement the collected material. If the questioning protocol is complete, the interrogator must familiarize the witness with its content by the witness personally reading it. Exceptionally, this can be done by the interrogator. If the witness reports amendments to the protocol, a correction must be made while documenting the changes made. Then the interrogators should ask the

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14 Ibidem.
question, whether the witness wishes to add anything else or complete. If the response is negative, the signing of the protocol can take place. An important matter which was omitted until now is briefing the witness about his obligation to secrecy, if in the course of the questioning he left with the possession of knowledge concerning such facts. Another important issue is the right of the witness to compensation for the costs incurred in connection with appearing on call, which at the request of the witness shall be regulated at the expense of the procedural authority. Underlining the important role the witness testimony in an ongoing preparatory proceeding is reflected in the courtesy of the interrogator and acknowledgments at the end of the activities. This formula testifies to good upbringing, and is also the creator of the proper image of investigation officers.

Methods of interrogating a witness

A consciously selected questioning procedure used in the course of interrogation activities, in order to obtain comprehensive and real testimonies, is understood as the method of interrogation. Whether the witness wants to testify at all, or gives false testimony is conditioned by the choice of the right method of questioning. Other factors determining the choice of the proper method of questioning consist of: the category of the offense, the nature of the source of information possessed by the witness, his personality, attitude towards crime, links with the victim or suspect, age and mental condition. If the witness does not intend to testify, and the officer of the interrogating authority knows that the witness in fact knows something about the given case, then his task is first to determine the causes of this situation, and then choose the appropriate method.

The first of the interrogation methods will be revealed together with the case. Its use consists in informing the person testifying that the interrogation authority knows that he came into contact with circumstances of a criminal case. Its advantage is the simplicity that allows to obtain reliable, comprehensive statements quickly and easily. However, there is a risk associated with the fact that the witness, in seeing the lack of evidence presented to him, may even stiffen his position on the matter of maintaining his chosen position. This method is used when the following conditions are met: the relationship of the witness with the case is thoroughly documented, invoking subjective factors is excluded – e.g. poor eyesight, the prediction that the witness under the pressure of the presented evidence will change his opinion and submit a testimony. The officer of the authority conducting the interrogation may also threaten to impose a penalty for breach of

order, if he has evidence to the fact that the witness is unduly evading from the obligation to testify. The penalty for breach of order, which is provided for by the code of criminal procedure in the event of such a situation is a fine, and also, independent of it, arrest for a period not exceeding 30 days.

Another method used by investigation officer during interrogation activities of the witness is persuasion, as a form of dialogue with the witness, in which this dialogue refers to the morality and civic duty of a witness. Therefore, the use of this method brings good results among educated people, with a high intellectual level, and its application in the interrogation of people who are morally degenerated is pointless. An example of the use of the method of persuasion can be the situation described below. Sometimes it happens that the witness – an upstanding citizen – tries to evade from testimony, because he fears, for unknown reasons, appearing before the court and having to testify again. This person must then be notified not only of his legal obligation to testify, but also refer to the conversation about feeling a sense of social obligation.

The next method of questioning the witness is the method of reminder. It is used in situations where the witness does not deny that he came into contact with circumstances relating to a criminal case, but claims that he is unable to remember the course of events. In investigative practice situations in which the witness covers himself by the passage of time and lack of memory are not exceptional, while the investigator believes that the witness does not want to testify. By using the reminder method, the interrogator refers to circumstances from the life of the witness, with regard to which he cannot cover himself by not remembering and which in some way (time and place) are connected with the criminal case. The process of refreshing memory should be started from things that are pleasant for the witness, which he will not want to negate. The next step will be to demonstrate the reminded circumstances with the criminal case and question the situation in which the witness was able to remember certain facts, and in others he was not. In this case, as a general rule, the witness will testify, as it will be difficult to withdraw from what he confirmed thus far. However, the method described will not apply among people who are stubborn and not susceptible to accusing them of illogicality.

The method for producing the sense of security in a witness is applied when questioning witnesses who are afraid to provide testimony that burden them with the fear of revenge, claiming that they do not know anything in the given case. In this case, the first step of the interrogator should be to determine whether the fear accompanying the witness is justified, is covered by facts, or just imaginary. If the officer manages to find out whether the fears of the witness are unfound-

\[\text{Ibidem.}\]
\[\text{Ibidem.}\]
\[\text{Ibidem, p. 158.}\]
ed, he should do everything possible to finally dispel them. However, in the case when the fears of the witness are the result of legitimate reasons, for example, the suspect has threatened to harm the witness or his closest person, the role of the interrogator is to present legal measures guaranteeing the witness safety. In order to obtain a comprehensive testimony of a witness, questioning activities must cause that the person testifying will feel sincere concern for his safety. It is particularly important to familiarize the witness with the content of article 245 of the criminal code, providing for criminal penalties for people using violence or unlawful threat in order to influence a witness, expert, translator, accuser or accused or in relation to this violating his bodily integrity. A guarantee of safety for the witness may also be achieved by using article 193 § 3 of the code of criminal procedure concerning the reservation of data on the place of residence to the exclusive information of the court and public prosecutor’s office. Then, pleadings addressed to the witness shall be delivered to the institution where he work or to another address indicated by him. In a special situation, where there is a well-founded fear of danger to the life, health, freedom or property of significant sizes of a witness or a person close to him, the court, and the prosecutor in preparatory proceedings, may issue an order to keep secret the circumstances permitting the disclosure of the identity of a witness, including personal data, if they have no importance for settlement in the case. The entry cited here refers to article 184 of the code of criminal procedure, dealing with the so-called “incognito witness”.

To a witness, who testifies falsely, and an officer of the authority conducting the activities has evidence in his case files demonstrating a different course of the events, such as protocols: inspections, searches, arrests or the testimony of another credible witness, the method of “direct indication of lies” is applied. Its use consists in presenting the witness providing false testimony the proof of lying, e.g. by reading to him the content of a different protocol, bearing in mind the tactical prohibition of disclosing the data of people and other identification data of people, circumstances, objects which interest law enforcement. Generally, a witness who can be demonstrated the falsity of his statements, after quick reflection provides a real testimony. However, if he is still telling lies, it seems appropriate to carry out the process of confrontation.

Immersing the witness in the contradictions of his false statements is used in the method of a dead-end. Is it applied primarily to people who talk a lot. An interrogating officer lets the witness talk as much as he wants, creating the illusion that he does not notice the lies of the witness. The objective of this method consists in the fact that the more false statements are made by the witness, the easier he will get confused. In order to lead the witness to the absurd and get

\[\begin{align*}
\text{Ibidem, p. 158–159.} \\
\text{Ibidem, p. 159.}
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lost in his own testimony, it is permissible to ask questions leading to a dead end, after which it is not possible to provide other false statements. One must bear in mind that the dead-end method can be used only if the interrogator knows well the course and circumstances of the event, and the witness is a person who thinks in a primitive way, and assuming that he did not have a lot of time to prepare his own false version of events. In addition, the interrogator should have adequate investigative experience, the ability to capture contradictions, including the critical moment\textsuperscript{23}.

Another way of questioning a witness is the “omniscience method”. It is based on the assumption that the interrogator has thorough knowledge about the life of the witness. Knowledge of the finest facts from the life of an individual testifying, which he did not attached great importance to, takes on particular significance here. This method can be applied in situations when: a witness provides false testimony, and the interrogator knows which fragments of the testimony are not real, the interrogator knows in detail the life of the witness and the characteristics of his personality, the witness is being questioned for the first time and does not know the tactics of interrogation. On the basis of knowledge of personality and behaviour typical of a witness, it is justified to assume that after demonstrating him knowledge about his life, he will come to the conclusion that the interrogating authority knows everything about him, so it also knows the real version of the event he is being questioned about. With this in mind, it can be said that in this method it is rather about alleged omniscience, which is served to the witness in the form of suggestion. Therefore, the main task of the officer will be to create appearances of omniscience and skilfully suggest this to the witness\textsuperscript{24}.

The second last method used in the interrogation of a witness is the method of detailed questions. It has been empirically confirmed that it is effective at the questioning of witnesses, who managed to agree amongst themselves to the content of false testimony. Its support is the assumption that persons agreeing earlier to false versions of their testimony, were not been able to refine all the details, especially the smallest, where their testimony will obviously diverge. The object of the most important questions in the questioning will be seemingly unimportant things. The lack of consensus as to the details, thus becomes the source of many contradictions, which are then exaggerated respectively by the interrogator, effectively convincing the persons about the futility of lies\textsuperscript{25}.

The last method of questioning the witness is called disclosure of the motives for lying. It consists in the leading officer stating to the witness, before beginning interrogation activities, that he knows the intention and motive for submitting false testimony. This intention and motive are usually disclosed through careful

\textsuperscript{23} Ibidem.
\textsuperscript{24} Ibidem, p. 159–160.
\textsuperscript{25} Ibidem, p. 160.
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analysis of the personality of the witness, his behaviour prior to interrogation, the form of relationship with other participants of the event, the attitude towards the committed crime, interest as to the particular method of ending the case. In the event of having to read the testimonies or explanations for the circumstances of revealing the motive for which the witness is lying, it becomes necessary to precisely mark which fragments of the testimony or explanations have been cited. In general, the demonstration by the procedural authority of the degree of knowledge about factors which led the witness telling lies or withholding the truth, is a sufficient argument to resign from the initially selected path and present the true version of events.

By analyzing all the above stages and methods of questioning a witness, it should be noted that their primary goal is to prompt the witness to submit a full, comprehensive testimony and, most importantly, consistent with facts. As far as matters relating to the order of interrogation stages the doctrine of the law of criminal proceedings is quite precise, not leaving the interrogator with a great choice, then in the case of methods of interrogation of a witness in the preparatory proceeding it does not top-down impose their use. As it is well known, none of the presented methods will give one hundred percent guarantee of getting the intended effects. In investigative practice, in order to achieve the goal, it is necessary to use several chosen methods at the same time. An example can be the simultaneous application of the dead-end methods and detailed questions immediately following towards the person, who even after reaching a critical point of absurdities in his testimony still insists that it is the true version of events. Finally, one should also have in mind that obtaining satisfactory witness testimony is conditioned on the one hand by the actual state of knowledge of the person testifying and his good will on the issue of being honest. On the other hand, crucial are the factors relating to the officer conducting the activities, among which the following come to the forefront: relevant professional experience, getting acquainted with the circumstances of the criminal case, knowing the personality traits of the witness and the skilful application of the right interrogation method in the right place and at the right time.

Literature


26 Ibidem.


