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SELECTED LEGAL AND MEDICAL ASPECTS OF A WITNESS SUFFERING FROM SCHIZOPHRENIA IN THE POLISH CRIMINAL TRIAL

Abstract

The purpose of the article is to indicate selected legal and medical aspects of the presence of a witness suffering from schizophrenia in the Polish criminal trial. The author deals with the clinical picture of schizophrenia, the ability of a sick witness to testify, and the related procedural consequences. The legal and medical literature, as well as court judgments and expert comments corresponding to the content, have been used in the arguments. The role of the witness requires that their thought processes run properly. Mental disorders may, depending on their type and severity, interfere with these processes. However, not every disease deviation disqualifies testimonies in terms of their value and not all do so to the same extent. Mental illness is one of the most serious mental disorders. One of the most severe forms of psychosis is schizophrenia. The condition for the correct assessment of the testimonies, which is the exclusive right of the procedural body, is a proper image of the witness's health condition. One of the mechanisms enabling factual findings to be truthful

and reaching the material truth is the regulation of Art. 192 § 2 of the Code of Criminal Procedure (CCP). In their opinion, the expert does not assess the credibility of the witness's testimony but confirms or excludes the presence of such features of the mental state that may affect the content of the testimony. The testimony obtained cannot be discredited *a priori.* The credibility of the testimony is assessed by the procedural body according to Art. 7 of the CCP. Each case should be approached without prejudice, in a manner marked by cold analysis. The required behaviour of the responsible jurist in this dimension is the activity consisting of extraordinary caution and criticism in interpreting the disturbed state of the witness.

Keywords: *Witness, schizophrenia, criminal trial, interrogation, testimony*

Introduction

A witness is a participant in the criminal trial and is a personal source of evidence. They fulfil a specific function assigned to them by procedural law. They provide evidence in the form of a testimony (Waltoś, 2005, pp. 153-199). The role of the witness cannot be overestimated. According to statistics, witness testimony is invariably the key evidence on the basis of which factual findings are made (Hanausek, 1993, p. 51; Kornak, 2009). Despite the development of knowledge and technical improvements that make it possible to create factual findings on the basis of material evidence, experiments, or expert opinions, it is obvious that the testimony of a witness is the basic means of evidence used by the court when hearing a given case. Therefore, the evaluation of the truthfulness of the witness's testimony remains one of the central problems of the criminal trial (Waszczyński, 1966, p. 52; Kudrelek, 2007, pp. 81-104).

The guiding principle of the criminal trial, the principle of material truth (Kaczmarska, 2016, pp. 231-236), expressed in Art. 2 § 2 of the Code of Criminal Procedure (CCP), according to which "the basis of all decisions should be true factual findings" (Journal of Laws 2022.1375, the consolidated text), imposes on the procedural bodies the obligation to implement some activities that recreate the event according to its actual course.

One of the mechanisms used in the implementation of the principle of material (objective) truth is the trial and forensic activity of interrogation, which, contrary to its appearances, is not simple. Many elements determine its correctness. These include, *inter alia,* the procedural rules, the forensic tactics, and the psychological sphere (Gruza, 2002, pp. 5-13). A witness with mental disorders exacerbates the difficulty of interrogating and assessing the value of their testimony. At the same time, Polish legislation lacks regulations that limit the possibility of giving testimony by persons due to their mental state (Grajewski, 2009, p. 386).

Due to the procedural role of the witness, it is important that their thought processes run correctly. Mental disorders may, depending on their type and severity, interfere with these processes. However, it should be noted that not every disease deviation disqualifies the testimonies in terms of their value and not all do it to the same extent (Cieślak, Spett, 1977, pp. 117-118). Witness testimony of mentally disturbed witnesses is burdened with subjectivism, but they also have obligations analogous to those of other witnesses involved in the proceedings. Circumstances correlated with the state of mental health are considered when admitting evidence after assessing its usefulness in the proceedings (Jagiełło, 2020, p.55).

Mental diseases are one of the most serious mental disorders. They are accompanied by pathological changes in the course of cognitive, motivational, and emotional processes. Disturbances in consciousness, attention, and changes in the personality structure are characteristic. One of the most severe forms of psychosis is schizophrenia, the main trait of which is personality breakdown or split of personality. Characteristic symptoms of the disease are hallucinations, delusions, and laxity of mental associations (Hołyst, 2018, p. 576).

Schizophrenia – introductory medical issues

The creator of the term schizophrenia is E. Bleuler, who wrote about the "group of schizophrenia", pointing to the varied picture and clinical course of the disease. The term comes from the Greek *schizo [σχιζο] – I split,* and *fren [φρεν] – mind, heart* (Kępiński, 2001, p. 12; Bilinkiewicz, 2000, p. 271). Despite the fact that in ICD-11 (International Statistical Classification of Diseases and Health Problems), implemented on 11 February 2022, the division of schizophrenia into subtypes (simple, paranoid, hebephrenic, catatonic, etc.) was completely abandoned (according to WHO, the division into subtypes does not influence therapeutic procedure or diagnosis), replacing them with only one diagnostic category – "schizophrenia" (Krawczyk, Święcicki, 2020, p. 11), various clinical forms of the disease that are manifested by the dominant symptoms should be considered.

Schizophrenia is a mental disease that invariably poses a challenge to psychiatry. It requires long-term treatment. Despite the progress in pharmacotherapy and the development of other forms of psychosis therapy, it remains a disorder with a chronic and degrading course. It is difficult to define clearly the etiopathogenesis of the disease in adults and children. The hypotheses confirmed in research and tested in clinical practice do not explain the causes of its formation or explain only some of the manifested symptoms (Śmierciak, Krzystak, Szwajca, Kazek, Urbanek, Bryll, Pilecki, 2018, p. 388). The aetiology of schizophrenia is multifactorial. Among the possible factors there are genetic factors, pregnancy and perinatal complications, psychoactive substance abuse, and life events.

In addition, in patients with schizophrenia, pathological changes in its structure can be seen in the image of the brain. Unlike nonsick people, the grey matter in the prefrontal cortex, temporal cortex and hippocampus is slightly smaller, especially in the left hemisphere. The lesion is characteristic of people who have experienced complications in foetal life or during childbirth (Kalat, 2006, p. 481; Kępiński 2002, pp. 14-22; Dziwota, Łaba-Stefanek, Małolepsza, Skoczeń, Olajossy, 2015, pp. 121-128). The defect mainly affects those parts of the brain that mature most slowly. It is also manifested through significantly fewer synapses in the prefrontal cortex (Kalat, 2006, p. 482;

Orzechowski, Piotrowski, Balas, Stettner, 2009, pp. 101-128). Changes also indicate a reduction in cell bodies in this area Kalat, 2006, p. 482). Operating (working) memory, which is a form of short-term memory thanks to which information is usually available for a short period Ganong, 2017, pp. 264-266), is part of disease-limited structures. It is a buffer that processes incoming information, and its action affects directly the quality of other cognitive processes, such as long-term and short-term memory, attention, concentration, and thinking. Moreover, the results of the conducted research indicate that the duration of the disease has an adverse effect on the functioning of operating memory (Giętkowski, 2012, pp. 26-33), which is important from the evaluation viewpoint of the testimony of the witnesses.

Schizophrenia is a brain disease that is correlated with its structural and functional changes. People with it often show psychotic symptoms, which make them behave differently from other members of society. Antipsychotic drugs can neutralize them. Apathy, social isolation, and cognitive dysfunction may persist. They affect most patients, but to varying degrees. It is an individual process depending on the course of the disease and external factors (Gałecki, Eichstaedt, 2022, pp. 68).

Clinical picture and the ability to testify by a witness suffering from schizophrenia

The deficit in the sphere of cognitive functioning is a constant phenomenon in the population of people diagnosed with schizophrenia during the deterioration associated with the disease, between consecutive episodes and, which is important in the field of assessing the witness's testimony, in the premorbid period. Many factors have an impact on cognitive functioning in the course of schizophrenia, including pharmacotherapy (Antosik-Wójcińska, 2018, pp. 188-193) and appropriate supplementation (Grancow-Grabka, Gmitrowicz, Pawełczyk, Pawełczyk, 2016, pp. 155-159). The testimony of a sick witness should also be evaluated through this prism. Modern medications used in the course of therapy can contribute to the reduction (in terms of time or quality) of cognitive dysfunctions. Each case must be verified individually,

based on information obtained from the attending physician of the patient who gives the testimony.

The procedural role played by the witness requires their activities of memorizing, storing in memory, recalling, evaluating, and communicating the content to operate properly. Mental disorders may have a negative effect on such functions, depending on their type and severity. However, it should be emphasized that not every deviation from the norm eliminates the probative value of the testimonies and not all cause it to the same extent (Cieślak, Spett, pp. 117-118).

In the clinical picture of patients with schizophrenia, formal thinking disorders in the form of distraction, shallowness, paralogical thinking (The lack of a logical sequence of thoughts is often accompanied by drawing absurd conclusions), ambivalence and neologisms are characteristic.

In the sphere of testimony, the most important are disorders of perception, attention, thinking, and memory. Perception disorders include delusions (illusions), which are changed perceptions of real objects or phenomena, the error of which is not corrected. Another disorder is hallucinations, which manifest themselves in the perception of objects and people that do not exist but are similar to real images. The sick treat them as real. They appear against the will of the sick person, who cannot free themself from them (Hołyst, 1989, pp. 113-119). They appear without an external stimulus. They are perceived as external sensations from one of the five sense organs (hearing, sight, taste, smell, touch). They are distinguished from thoughts, ideas, fantasies, or concepts. Other positive symptoms of schizophrenia that are important from the viewpoint of being a witness are, in addition to those mentioned above, delusions and distraction. Delusions are disturbances in the content of thinking; false judgments and beliefs inconsistent with reality, which are expressed by the patient with a deep conviction of their truthfulness. The sick do not correct them despite evidence of their incorrectness. Their characteristic feature is that they have a disease context. They always appear with other psychopathological symptoms, which distinguishes them from lies or ignorance. Delusions can be divided according to the criterion of content into, *inter alia*, persecutory, depressive, grandiose, or suppressing ones, and in the form into paranoid or paranoiac ones. The content of the delusions

may be of diagnostic importance. Schizophrenic breakdown of the speech structure is called distraction. Chaotic nature, aimlessness, and lack of correspondence with the current situation are also visible in this highest form of mobility. Distraction is an axial symptom of schizophrenia, characteristic of all its forms. The degree of distraction can vary. From insignificant, when individual parts of a sentence are understandable, to extreme, in which speech consists of neologisms, exclamations, or only individual syllables (Kępiński, 2001, p. 35). One of the symptoms of distraction in the course of thinking is intellectual ambivalence (*ambisententia)*, a phenomenon consisting of the coexistence of contradictory judgments in the patient's consciousness, which are perceived as simultaneously true. Another manifestation is the phenomenon of thinking inhibition, which is the occurrence of sudden interruptions in thinking and the accompanying feeling of thought *voidness*. The patient may also be convinced that their thoughts have been taken up by someone and that they are known to those around them (Hołyst, 1989, pp. 126-127).

Attention disorders of mentally ill people concern three parameters: scope, persistence, and shifting. The limitation of the scope may consist in the inability to concentrate even for a short moment while performing even the simplest activities. The persistence of attention can be manifested by its reduction or pathological increase. Shifting of attention, on the other hand, consists of levelling the interest in the objects of the surrounding world. The sick person perceives all objects in an equally interesting or indifferent way (Hołyst, 1989, pp. 120-121).

A schizophrenic suffering from the hebephrenic form gives ridiculous answers, not related to the question. The sick talk willingly and a lot, often incomprehensibly. They jump from topic to topic, associating by random similarity of words. They repeat the same phrases creating neologisms. They are lively and playful. In catatonic schizophrenia, speech inhibition may occur – mutism or repetition of the same words. The spoken words most often express fear, and less often ecstasy. They are not linked in sentences. The sick person often sings them with a strong voice, repeating the same fragment of the melody. It happens that the patient does not respond to questions, comments, and orders. It is also possible that they will limit the answers to the questions to laconic "yes" or "no". The silence of catatonic inhibition can be broken by

a state of transient excitement, in which the patient becomes talkative and even aggressive. In the form of delusional schizophrenia, the patient tells the story of his life with the smallest details. Their memory is amazing at times. This extraordinary memory only applies to cases that fall within the delusional system. In objective test studies, no memory improvement has been found, but rather its deterioration. The perception of the sick person is acute. The smallest things matter to them because they are drawn into a delusional structure that is being formed (Kępiński, 2001, pp. 28-40).

The phenomenon of memory distortions is also noticeable in paranoid schizophrenics. They distort their memories under the effects of their delusions. For example, they situate themselves as victims, when in fact they have been perpetrators (Kępiński, 2001, p. 131).

The most common features of testimonies of people suffering from paranoid schizophrenia include the lack of structure of the statements, the lack of logic, indicating irrelevant details, the blurred context and the problems of distinguishing which contents are the result of one's own observations and which are subjective experiences Sitarczyk, 2012, p. 213).

In the clinical picture, other characteristic symptoms should be indicated, which may suggest that we are dealing with a person suffering from schizophrenia despite the lack of diagnosis. They are emotions that can be shallowed. The sick are accompanied by maladaptation and apathy. As part of motivational processes, one can indicate abulia (inability to make decisions and actions. It often accompanies a decrease in psychomotor drive), avolition (eglecting routine activities, such as going to work or school. Decreasing the pursuit of life goals) or ambitendency (contradiction of aspirations). The change in motor activity in the form of arousal or inhibition is also significant. This collection also includes stupor (Lack of reaction to stimuli while remaining conscious), echopraxia (automatic mimicking someone else's movements), echolalaia (repeating heard words or sentences), stereotypes, mannerisms or grimacing. Posturisms (adopting unusual, bizarre, non-physiological body positions) are also a characteristic of schizophrenia.

Consequences of the presence of a witness suffering from schizophrenia in a Polish criminal trial

The condition for the correct assessment of testimonies, which is the exclusive right of the procedural body, is a good image of the health condition of the witness (Wojciechowski, 2012, pp. 70-79). One of the mechanisms enabling factual findings to be truthful and reaching the material truth is the regulation of Art. 192 § 2 of the CCP (Journal of Laws 2022.1375, the consolidated text), which states that "if there is doubt about the mental condition of a witness, their state of mental development, the ability to perceive or reproduce their perceptions, the court or the prosecutor can order the witness to be examined with the participation of an expert physician or an expert psychologist, and the witness cannot oppose it". The indicated provision is not obligatory. It gives the possibility of ordering an interrogation with the participation of selected experts. The implementation of this procedural institution takes place only when in light of life experience and indications of knowledge, in the unique realities of a specific case, reasonable doubts arise about the mental state of the witness, their ability to perceive or reproduce perceptions, or mental development (The decision of the Supreme Court of 5 February 2021, II KK 394/20). The analysed provision cannot be interpreted broadly and the hearing with the participation of experts cannot take place for the convenience of the procedural bodies or the parties (The judgment of the Court of Appeal in Wrocław of 17 May 2017, case no. II AKa 90/17). These doubts must arise from specific facts. Therefore, the basis for the request for an expert hearing is only the circumstances that justify the suspicion of a state that reduces the ability to report facts. In their opinion, the expert does not assess the credibility of the witness's testimony (Cf. K. Bajda, *Przesłuchanie świadka koronnego,* Acta Universitatis Wratislaviensis 2009, pp. 117-130), but they confirm or exclude the presence of features of mental state that may affect the content of the testimony (The judgment of the Supreme Court of 24 January 2019, IV KK 158/18). These circumstances do not constitute a conviction of the party that the testimony is inconsistent with reality (The decision of the

Supreme Court of 17 May 2017, IV KK 148/17). As the Court of Appeal emphasizes in the judgment, "the mere fact of the occurrence of a mental illness in the interviewed person does not justify such a decision, if it does not raise the above doubts, in particular as to their ability to perceive or report observations" (The judgment of the Court of Appeal in Lublin of 15 March 2017, case no. II AKa 60/16). Furthermore, the mere fact that the witness testifies in their statement that they do not remember the event in which they participated does not justify conducting the interrogation in the analysed mode (The judgment of the Court of Appeal in Gdańsk of 10 January 2017, case no. II AKa 336/16). It should also be emphasized that the statutory requirements of the provision will not be met in the event of a request from an expert psychiatrist to provide an opinion on the mental health of the witness or the possibility of perceiving and recreating the perceptions by them, if this opinion has been prepared only based on the results of the previously conducted treatment (The judgment of the Supreme Court of 14 December 1979, III KR 393/79.). Furthermore, it is important that the case of psychiatric treatment does not determine the opinion that the testimony of the witness is unreliable, especially when these diseases have not been found at present (The judgment of the Supreme Court of 11 January 1980, III KR 358/79).

The analysed provision is optional; however, if justified doubts are identified, it is necessary to appoint an expert (The judgment of the Court of Appeal in Warsaw of 3 February 2016, II AKa 352/15). The obtained testimonies cannot be accepted or rejected *a priori* in their entirety. The expert is an assistant to the procedural body to carry out the questioning. Due to the fact that they do not examine the witness, their comments may be general, approximate and relative (Zoń, 2010, p. 89). The Supreme Court emphasizes that "the subject of the activities and opinions of an expert appointed under this procedure may not be the evaluation of the credibility of the witness's testimony, but the confirmation or exclusion of the presence of such features of the psychological or mental state of the witness that may affect the content of the testimony" (The judgment of the Supreme Court of 24 January 2019, IV KK 158/18). An expert psychiatrist present at the hearing of a witness can contribute to making the testimony more credible by directing the interview properly. When asking

questions, they should take the initiative to obtain more accurate and credible statements. The expert cannot confirm the truthfulness of the statement. They can only indicate the presence of such personality traits or psychopathological symptoms that reduce the credibility of the statement or make it unreliable (Przybysz, 2005, pp. 80-81).

An expert in the analysed procedure has no right to issue any opinion on mental health, even if they could draw highly probable conclusions from the interview. They can only capture such features of a witness's statement that justify expressing an opinion about their ability to give credible testimony. The presence of mental disorders should not discredit *a priori* the witness as incapable of giving credible testimony. However, special care must be taken to assess this ability. The expert's task is to explain to the court which symptoms of mental disorders may affect the indicated ability and how they may distort the witness's accounts. Witness testimony of mentally disturbed witnesses must be critically assessed and accepted as evidence only in combination with other facts. It should be emphasized that this is at the exclusive discretion of the court (Przybysz, 2005, pp. 80-81).

The purpose of the commented regulation is to verify the probative value of the witness's testimony, which may be debatable due to the doubts listed in the provision. The credibility of the testimony is assessed by the procedural body (Hofmański, 2007, p. 897). According to Art. 7 of the CCP (Journal of Laws 2022.1375, the consolidated text), which expresses the principle of free evaluation of evidence, it forms its belief based on all the provided evidence, assessed independently considering the principles of correct reasoning, indications of knowledge, and life experience. This principle underlies proper judgment. It leads to a conviction by a judge, which should be reflected in the reasoning of the decision (The judgment of the Supreme Court of 5 September 1974, II KR 114/74).

In relation to a witness, pursuant to Art. 189 point 2 of the CCP (Journal of Laws 2022.1375, the consolidated text), in relation to whom there is a justified suspicion that due to their mental disorders they are not aware of the meaning of the oath, such an oath is not taken. Of course, it would be useless to demand an oath from someone who does not understand the role that it plays (Znamierowski, 2014, pp. 132-144). The court decides on the existence

of a state that commands the resignation from receiving the oath on the basis of the material at its disposal. This state does not need to be proven; it is sufficient to assume it as more probable (Grzegorczyk, 2014).

Hearing of a person suffering from schizophrenia also increases the risk of assault during questioning. Aggression of the interviewed person may take the form of self-aggression, an aggression directed at another person, and an action aimed at objects in the interview room. Research on violent and aggressive behaviour among patients hospitalized due to psychiatric diseases indicates that the most important risk factors for their occurrence are the patient's criminal record, past aggressive incidents, and a short duration of the disease. An important circumstance is also the use of sedatives and male gender (Szymaniuk, Trzeciak, Balaj, Siembida, Rajewska-Rager, Michalak, 2017, pp. 23-32).

The course and prognosis of schizophrenia depend on many factors related to the patient, their family, social situation, and treatment methods. Among them, the presence and depth of cognitive deficits are of significant importance. They include the verbal and nonverbal spheres. They are most often manifested by disturbances in attention, deterioration of memory functions, weakening of working memory, and executive functions. To develop research on pharmacological agents that influence cognitive functions, a set of tests has been introduced to assess changes in key areas for this disorder (The MATRICS, Measurement and Treatment Research to Improve Cognition in Schizophrenia, initiative uses the MCCB test battery – MATRICS Consensus Cognitive Battery). They are a tool for assessing the baseline level and changes in cognitive functioning. Cognitive functions assessed by MATRICS MCCB include speed of processed information, attention and wakefulness, working memory, acquisition of verbal and visual material, reasoning and problem solving, and social competences. It is a standard in clinical and research studies of the cognitive functioning of patients with schizophrenia. A particularly valuable parameter with a high reliability coefficient is the total test result, which allows to determine the degree of deficit (Jędrasik-Styła, Ciołkiewicz, Denisiuk,, Linke, Parnowska, Gruszka, Jarema, Wichniak, 2012, pp. 261-271. The Polish adaptation of MCCB, which is generally used in the diagnosis and treatment of patients, may be a valuable source of information and enrich knowledge about the personal source of evidence in the criminal procedure.

Conclusions

In summary, it should be emphasized once again that in the event of doubts indicated in the provision of Art. 192 § 2 of the CCP, a witness should be heard in the presence of an expert. When assessing the evidential value of an expert opinion on a witness, one should share the Court of Appeal's thesis, according to which, "when the issuing of an opinion is preceded by the examinations carried out by an expert, to which the witness must consent (Art. 192 § 4 of the CCP), the evidential value of such an opinion is incomparably greater than of an opinion prepared solely on the basis of the participation of an expert in the hearing" (The judgment of the Court of Appeal in Łódź of 14 June 2016, case no. II AKa 97/16).

In addition to knowledge of case files and additional psychological tests, the element of directness during interrogation is of significant importance for the publication of opinion. The expert observes the course of the interrogation and analyses the content of the witness's statements and reactions. They also have the right to ask questions on issues important for the performance of the expert's task. Their presence is required throughout the whole interview (The judgment of the Court of Appeal in Łódź of 24 April 2014, case no. II AKa 70/14). The principle of direct participation of an expert is of considerable importance. There is a large group of authors according to whom the nonverbal message is more effective than the verbal one. Therefore, the thesis that "it is not important what is said, but how it is said" is also a reasonable thesis (Kępiński, 1999, pp. 375-376).

Each case of a witness suffering from schizophrenia should be assessed individually, not rejecting their testimony *a limine*. The course of the disease can be different and unpredictable in each case. The current psychophysical condition of the witness is a factor that has a significant impact on the content of the testimony, which must be considered each time the procedural body assesses its credibility (Przybysz, 2005, p. 79). Despite the fact that patients who are aware of their disease and undergo regular treatment are much more dependable (Sitarczyk 2012, p. 227), each case should be approached without prejudice, in a manner characterized by cold analysis. The required behaviour of the responsible jurist in this dimension will be an activity consisting

of extraordinary caution and criticism in interpreting the disturbed state of the witness. However, it does not exclude the obligation to follow the path of courage, imagination, and boldness in making and refuting all the hypotheses set out by the eminent physician and humanist, Professor A. Kępiński (Kępiński 1978, p. 37; Gurgul, 2018, pp. 94-122). Referring to the basics of specialist disciplines, including psychiatry and psychology, it is possible to leave blind alleys and explain the larger totality of the analysed issues (Gurgul, 2018, pp. 94-122).

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