

Uniwersytet Wrocławski

Wydział Prawa, Administracji i Ekonomii

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The concept of a so-called vulnerable witness: the legal and forensic analysis based on the practice of international criminal tribunals and hybrid courts

summary of the doctoral dissertation

written under the supervision of Prof. Maciej Szostak PhD.

The subject of this dissertation is a concept of a so-called 'vulnerable witness' in criminal proceedings before international and hybrid courts. The author presents it in an interdisciplinary research perspective taken from forensic tactics and criminological determinants and discusses its substantive criminal law and procedural aspects.

The analysis of the practice of the courts competent to adjudicate war crimes and crimes against humanity concerning witnesses of these extremely drastic acts shows that solutions aimed at protecting the well-being of witnesses, which for various reasons are at risk, are increasingly used. It is also becoming common to use the term 'vulnerable witness' in documents relating to the functioning of these courts for witnesses particularly exposed to various types of inconvenience linked to giving evidence.

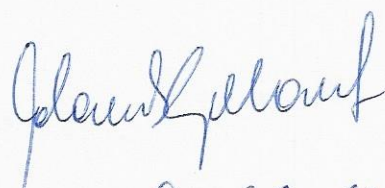
The dissertation attempts to establish, to the needs of international criminal proceedings, criteria for determining the category of the so-called vulnerable witnesses. The use of such criteria will facilitate the identification of such witnesses at the earliest possible stage of the proceedings. Still, it will also help to understand their motivation when making decisions about giving testimony. In turn, it will enable to implement an appropriate support system and proper forensic tactics to obtain the most reliable depositions from them. As a result, the well-being of the witness will be better protected, and criminal proceedings in cases of international crimes will be conducted more efficiently due to the possibility of obtaining a more comprehensive and credible body of evidence.

The first chapter of the dissertation presents a place of the so-called vulnerable witness in the classification of witnesses appearing before international courts, what in turn required a synthetic presentation of the specificity of proceedings pending before international criminal courts. The differentiation of witnesses introduced there, made concerning the purpose of the proceedings and the tactics of building a case, may contribute to a more effective gathering of evidence. Awareness of the importance of specific information and sources of evidence to determine the events' circumstances, especially recreating their broader context, is key to formulating charges in war crimes and crimes against humanity cases.

The next chapter discusses the specific conditions that may affect the so-called vulnerable witness appearing before international or hybrid courts, both internal connected directly with the witness and external to him. The latter element plays a vital role in cases involving war crimes and crimes against humanity, which are essentially collective, not merely individual, experiences. On the other hand, unlike before domestic courts, the appearance of witnesses before an international court requires their goodwill. Therefore, it is also necessary to understand their motivation in deciding whether to testify in a case. The awareness of the possible motives for participation in the proceedings may facilitate recruitment of witnesses, including the so-called 'vulnerable' ones, without whom it is impossible to proceed with the case successfully.

The last chapter of the dissertation presents the elements of forensic tactics applicable to the so-called vulnerable witnesses at various stages of criminal proceedings in the international judiciary. Particular attention was paid to the support provided to witnesses and the ways of protecting their well-being at different stages of the proceedings, including during cross-examination typical of the common law system, which often is a source of considerable stress for the so-called vulnerable witnesses.

The interdisciplinary conclusions presented as the final remarks regarding the so-called vulnerable witness in proceedings before international and hybrid courts justify the need to continue research on this concept. The conducted analysis provides grounds for indicating some common determinants affecting that category of witnesses and, consequently, how to deal with them to obtain valuable testimony and protect their wellbeing to the greatest extent.


06.08.2021