

PLACE OF THE CRIMINALISTICS IN THE SYSTEM OF SCIENCES

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S u m m a r y

The article deals with question are the criminalistics one of subsection of jurisprudence (science of law).

At first in article has shown solving of that question of Latvia, where in accordance with argumentation and detection of science's council criminalistics is one of subsection of jurisprudence. In the same way question had solved almost in all Eastern Europe countries.

Farther article gives analysis of situation in that connection in USA and Germany where this question is solved in different way.

In USA and other English-Language countries term "criminalistics" almost does not used. In mentioned countries are using terms "forensic science" and "criminal investigation" which relations with jurisprudence are unclear.

In Germany is proposing a special bloc of "criminal sciences" consists from "jurisprudence's criminal sciences" – as a criminal law, criminal proceeding law and "non jurisprudence's sciences" – such as criminology and criminalistics. The rest of them are not teaching in law faculties, but in police education institutions only.

In final part of article with regret has resumed that Law faculty of University of Latvia accepted mentioned Germany's experience and cancelled criminalistics from compulsory disciplines. Yet more, recent accepted standard of layers profession does not demand understanding even common knowledge about criminalistics, aside from abilities to find, fix, evaluate and use proves. As well article shows scientific groundlessness, dangerousness and negative consequences of that point of view.

In Latvia like in most countries of Eastern Europe criminalistics is considered a subsection of jurisprudence¹. In Latvia this has a legal basis – on March 13 2001 the Latvian Council of Science detached criminalistics and the theory of crime intelligence from criminal law where it was included as a subsection and now it constitutes a substantive section of jurisprudence.

Criminalistics studies crimes, regularities of their reflection in the environment and the formation of information about them. On the basis of this knowledge criminalistics develops technical tools, tactical techniques, methods of investigation and intelligence gathering for crime prevention, detection, gathering and research of evidence and overall investigation.² All these tools and methods may be used only according to provisions of the Criminal Procedure Law and Law on Intelligence Activities.

¹ H. Halitovič, N. Bojanic. Criminalistics scencia sui generis – arguments pro et contra. Dilemas of Contemporary Criminal Justice. Faculty of Criminal Justice University of Maribor, Slovenia, 2004, p.p. 372-379.

² Kriminālistika. Pirmā daļa, LPA, Rīga 2003. g. 15. lpp.

None of these recommendation or techniques developed by criminalistics may be in conflict with rules of the mentioned laws. Any criminalist has not only to know these laws, but also research their application in practice and has to work out scientifically grounded methods and recommendations which should be in conformity with certain laws. Thus in Latvia after renewal of independence a number of effective novelties was introduced in the criminal procedure law on the basis of research made by criminalists. Examples are rules of witness protection, draft law on special investigative activities whose effectiveness is higher than that of traditional methods, etc.

Therefore it is very hard to imagine existence and development of criminalistics outside jurisprudence, because jurisprudence was the reason for its coming into existence and development since the time when Hans Gross¹ wrote the historical book the title of which first included term “criminalistics”.

However, strangely enough the point of view that criminalistics is a part of jurisprudence does not exist in all countries, in the first place in the English speaking countries – USA, Britain, Canada etc.

Although term “criminalistics” exists in English, it is almost never used. Similarly there is no unitary subsection of jurisprudence or other branch of science. Even the voluminous “Dictionary of Crime” published in the USA included a very laconic explanation: “Criminalistics – the scientific investigation of crime”.² Other dictionaries contain similar brief definitions: “Criminalistics – the scientific study of evidence in a criminal case and of individuals involved in such case”.³ The term “forensic science” is used more often and it denotes a large scope of forensic examination (dactyloscopic, ballistic, psychiatric etc.). A dense network of splendidly equipped forensic laboratories has been built for performance of these multiform examinations and perfection of their methods and even the American Academy of Forensic Science has been established which publishes a very informative and exhaustive journal⁴ which reflects the latest achievements in methods of forensic examinations. Thereby this field could be theoretically compared to the first part of criminalistics in Latvia – “criminalistics technique” although it does not include forensic medicine, psychology and psychiatry which are subsection of science of medicine.

The two remaining parts of Criminalistics are “criminalistics tactics” which includes developing tactics of all statutory investigative activities, and “methods of criminalistics” which deals with methods and peculiarities of investigation of different kinds of crime. In the above mentioned countries they are not integrated in a unitary subsection of any science with its own system and structure. Corresponding problems are researched and solved by a lot of universities and specialists of law enforcement institution, e.g. the FBI. They publish voluminous books in which titles the term “criminal investigation”⁵ is commonly used. In the USA this field is seen as both science and art.⁶ Unfortunately the author failed to gather information how relations of the mentioned fields with jurisprudence are interpreted in these countries.

Unlike the above mentioned countries in Germany term “kriminalistik” is widespread. It means approximately the same as in Latvia. However in Germany the point of view about the place of criminalistics in the system of science has specific features.

Firstly, in Germany there was built an argument about the existence of a specific bloc of “criminal sciences” which included “all disciplines engaged in dealing with individuals’ criminal acts.”⁷ The bloc consists of two parts: juridical criminal sciences (criminal law and criminal procedural law) and non-juridical criminal sciences (criminalistics and criminology).

Although the point of view about the non-juridical character of criminalistics has opponents, nowadays it is no longer studied at the law faculties of German universities. It is being taught only at police training institutions. Unfortunately in this aspect Latvia follows the German lead – in the Faculty of Law of the Latvian University criminalistics has been struck off the list of compulsory courses and the newly approved standard of the profession of lawyer does not require even an understanding of criminalistics aside from its knowledge and comprehensive skills in gathering of evidence.

¹ Ганс Гросс. Руководство для судебных следователей как система криминалистики. Спб., 1908.

² Dictionary of Crime. By Jan Robert Nasch, Paragon House, New-York, 1992, p. 87.

³ Introduction to Law Enforcement and Criminal Justice, US DOJ, FBI, 1990, glosary.

⁴ Journal of Forensic Sciences, American Academy of Forensic Sciens. Colorado Springs, USA.

⁵ For instances, C. R. Swanson, N. C. Chamelin, L. Territo. Criminal Investigation. Mc.Grow-Hill, 2003, 8 edition.

⁶ P. A. Modafferi. Recognizing Innovation in the Art and Science of Criminal Investigation. The Police Chief, April 2003, vol. LXX, No 4, p. 140.

⁷ G. Schmelz. Die kriminalistik in System der Kriminalwissensch aften // Kriminalistik. 1997, N. 8/9, S 557-563.

According to the attempts to change criminalistics into a non-judicial science are not only a theoretically but also practically dangerous. Already in the beginning of the article it was stressed that any tool or method created by criminalists may be used only according to the law. Consequently at first the law has to be known, respected and correctly applied. Therefore by teaching criminalistics and delegating its application to non-lawyers who do not possess understanding, knowledge and skills, there is created an inevitable risk of breaches of the law when tools and methods which are physically possible but in conflict with the law will be chosen. As an example there could be mentioned officers of intelligence agencies who organised humiliation of prisoners in Iraq with the purpose of getting evidence from them. They evidently did not know the law.

The above mentioned lawyer's standard will have grave consequences. According to the Latvian criminal procedural legislation (both the procedural code in force and the draft procedural law) during preliminary investigation prosecution is brought only by prosecutors. These offices may be held by individuals who meet the above mentioned standard, i.e., individuals who do not have knowledge or understanding of criminalistics and do not know criminalistics' tools and methods and their usage during investigation.

It seems that judges as well will meet difficulties in evaluation of evidences without knowledge of the essence of their obtaining.

Conclusion

Summarising the aforesaid there arises a conclusion that "delegalisation" of criminalistics both in the direct meaning – trying to exclude it from the content of jurisprudence and in the indirect meaning – excluding it from the lawyer's professional standard, are not scientifically grounded and in practice will generate negative consequences.

The matter is serious enough to be discussed at a separate international conferences or at least at a panel session of a conference.



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Kriminalistikos vieta mokslų sistemoje

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Pagrindinės sąvokos: teisės mokslas, kriminalistika, baudžiamasis tyrimas, studijos, teisininko kvalifikacija.

SANTRAUKA

Straipsnyje nagrinėjami klausimai, susiję su kriminalistikos vieta kitų teisės mokslų šakų sistemoje.

Straipsnio pradžioje autorius apžvelgia norminius aktus, pagal kuriuos kriminalistika Latvijoje priskiriama teisės mokslų šakai. Autorius nurodo, kad panašiai šis klausimas išspręstas ir kitose Rytų ir Vidurio Europos valstybių šalyse.

Nagrinėdamas kriminalistikos vietą JAV ir Vokietijos teisės mokslų sistemoje autorius teigia, kad šis klausimas sprendžiamas įvairiai.

JAV ir kitose angliškai kalbančiose šalyse sąvoka „criminalistics“ (kriminalistika) beveik nevartojama. Angliškai kalbančiose šalyse dažniau vartojamos sąvokos „forensic science“ bei „criminal investigation“ (baudžiamasis tyrimas), tačiau šių sąvokų sąlytis su jurisprudencija nėra aiškus.

Tuo tarpu Vokietijoje siūloma, kad „baudžiamieji mokslai“ – baudžiamoji teisė, baudžiamasis procesas ir „nebaudžiamieji mokslai“ – kriminologija ir kriminalistika – būtų jurisprudencijos sudėtinė dalis. Todėl siūloma, kad kita „baudžiamųjų mokslų“ dalykų dalis nebūtų dėstoma teisės fakultetuose, o tik policijos mokslų institucijose.

Baigiamojoje straipsnio dalyje autorius apgailestaudamas konstatuoja, kad Latvijos universiteto Teisės fakultetas perėmė Vokietijos patirtį priimdamas sprendimą išbraukti kriminalistiką iš privalomųjų teisės mokslų dėstomų dalykų. Neseniai priimti teisininko profesijos standartai nereikalauja iš būsimo teisininko kriminalistikos žinių, išskyrus sugebėjimus surasti ir įvertinti įrodymus. Baigdamas autorius teigia, kad toks sprendimas mokliškai nepagrįstas, pavojingas, bandoma išvelgti neigiamus priimto sprendimo ir požiūrio padarinius.

