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LOGICALLY METHODOLOGICAL ASPECTS OF POSITIONING CRIMINALISTICS IN THE SYSTEM OF SCIENTIFIC KNOWLEDGE

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Summary

The article "Logically methodological aspects of positioning criminalistics in the system of scientific knowledge" deals with different levels of knowledge about criminalistics. Logically methodological aspects of positioning criminalistics in different systems of knowledge and practical activity are also analyzed in the article. In authors opinion it should be marked that historical tendencies of forming criminalistic knowledge let to formulate two main directions of the development of criminalistics: 1) direction of purposeful summarizing of criminal offences investigation experience by scientific methods and means with the aim to create more effective means and ways of contemporary criminal offences investigation, id est, direction to utilitarian attitude to scientific knowledge; 2) direction, following which in order to describe and explain sphere of reality related with criminal offences investigation, purposeful work in developing theory of criminalistics will take place.

What is criminalistics? Everybody could give the answer to this question. Nearly all the answers will be different, and each of them in some respect will be right.

More than 100 years ago H.Gross (Hans Gross, 1847–1915) has introduced the term "criminalistics". Concept indicated by the term was a subject of interest and curiosity for wide sections of population through many generations during the years. Representatives of applying criminalistic knowledge were perceived as people of outstanding competency.

Historically criminalistics become apparent in reality as the concept in four levels (meanings). Well-marked content of the concept "criminalistics" on each level (in each meaning) was generated by Gnostic task; it not only created this meaning of the concept, but also positioned it in conceptual system of thinking for particular person.

On the first level of knowledge concept "criminalistics" appears in so-called household conception. Mainly persons without special education and persons who professionally are not involved in investigation of criminal offences have such a conception. Their opinion is based on their own impressions from being victims or witnesses of criminal offence, or evidencing investigation of criminal offence, or using impressions of other people. Content of such a conception about

criminalistics is fulfilled mainly by rumours, guesses etc. Pretty often stories about knowledge in criminalistics for this kind of people begin with the words: "I was told by one investigator (detective)…" etc.

On the second level of knowledge about criminalistics the concept "criminalistics" appears as it is formed by representatives of different art styles (detective stories, novels, sometimes reminiscences of former policemen and prosecutors, detective movies etc.). Basic subject of this kind of art is opposition between criminals and police or prosecution or private detectives, like opposition between evil and good. It should be remarked that positioning heroes of detective movies or novels in the sphere of crime investigation is the mean for solving firstly artistic purposes, but not the way for disclosure of scientific base for investigation of criminal offences. The most popular representatives of detective genre in literature should be mentioned Arthur C. Doyle, G. Simenon, J. L. Fleming, brothers Wainer, A. Marinina, A. Bels etc. Characteristic feature for this level is that there are no borders between possible and reality; fiction is fit in reflection of objective reality. This level of knowledge about criminalistics gratifies people's desire for insubstantial perception of surroundings.

The third level of knowledge about criminalistics is based on information featured in popular science editions. Characteristic feature for these editions is their simplified scientific nature, not strict terminology as well as clearness and evidence of observable effect while applying this kind of knowledge. The main goal of such popular scientific editions is to popularize activities of applying scientific knowledge in the field of criminal offences investigation as well as to establish trust for the results got by using methods and means of the science criminalistics, for example, editions by J. Torvald, TV series "Forensic Science", "Forensic Detectives", "Crime Night", "Material Witness" etc. These sources accessibly for people with different levels of education outline the essence of some scientific ways and means used during investigation of criminal offences.

And at last, the concept "criminalistics" can be understood as logically in a definite way organized system of scientific knowledge describing, explaining process of criminal offences investigation. Such a system normally is called science of criminalistics. (Here the term "science" is used to indicate system of credible, logically consistent knowledge about regularities of development of certain branch of objective reality (outness)). Other meanings of the concept "criminalistics", for example, criminalistic activity, complex of recommendations etc., are derived from the meaning of "Science of Criminalistics".

Possibility for appearing many meanings of some concepts was formulated by American philosopher F. Frank (Filipp Frank, 1884–1966). He has written that every youngster obtains during his education some apprehensible for everyday common sense understanding of world. The obtained during childhood and juvenility understanding of world too often remains as standpoint for everyday common sense also for grown-up scientist in all the areas in which he is not a "specialist". (14–76)

Criminalistics came into being from the depth of criminal proceedings in the middle of 19th century. Its main task at that time was to ensure criminal procedure with information on the base of which it was possible to judge objectively about circumstances of event. Further on it allowed giving the right qualification of the event according to criminal law legal provisions.

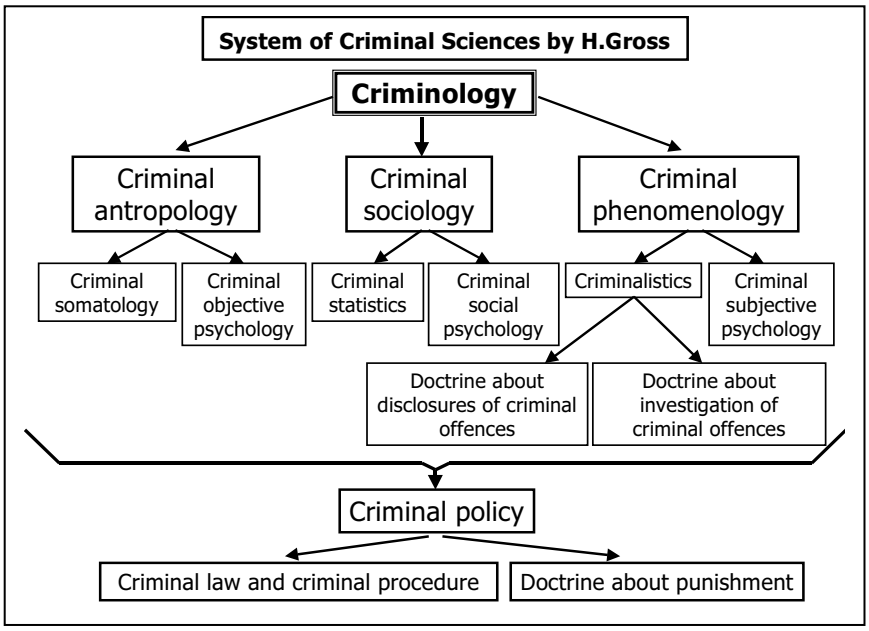
At the end of 19th century investigation experience was summarized. The result of summarizing the experience was edition of Austrian criminalist H. Gross (Hans Gross, 1847–1915) "Handbook for Court Investigators as the System of Criminalistics" (Handbuch für Untersuchungsrichter als System der Kriminalistik). This book was a result of summarizing some experience of Austrian court investigators and is considered to be the beginning of development for criminalistics. The title of the book directly shows nature of included information and peculiarity of exercising it. Content of the H. Gross book as well as content of other editions of that kind mainly was filled up with practical knowledge and recommendations necessary for work of investigators and experts during criminal offences investigation procedure.

Further on special units (institutes, laboratories, resource rooms etc.) were established by executive power (Ministry of the Interior, prosecutor's offices etc.) with the aim for intensive summarizing up the experience of applying criminalistic knowledge in practice. The main duty for these units was summarizing of practical experience during investigation of criminal offences and developing of practical recommendations directed to optimization of the criminal offences investigation procedure. The results of this work of the Ministry of the Interior and prosecutor's office's institutes, laboratories, resource rooms were drawn up in training aids, bulletins, guidelines, instructions etc.

In such a way criminalistics for a long time was used in practical activity and professional education. This fact make clear why criminalistics was not and is not included in educational programs for many universities of Western Europe and USA. The main reason for this situation is that until now criminalistics is not enough developed as scientific theory, and, as it is known – academic approach needs theorizing knowledge.

Practical attitude of people to exterior world is a definite value and has systemic nature therefore also the results of people's cognition have to have certain unity and entirety. (14–47) It puts on the development of criminalistics orientation taking into consideration of which provide for criminalistics to develop as the system. This system in its turn has to pass in a more general system. This could be achieved by absolution of theoretical knowledge and using deductive methods to ground on this knowledge. (9–22)

Positioning criminalistics in the system of scientific knowledge was started by H. Gross and still is going on. H. Gross positioned criminalistics in the system of criminology and represented it as the system consisting of two sub-systems: doctrine about disclosures of criminal offences and doctrine about investigation of criminal offences. (5–C.XVI)



During more than one hundred years of development clarifying of the basic elements (object of cognition, topic of cognition, subjects of cognition, methods of cognition etc.) of criminalistic cognition process has taken place. It reflects on convictions of scientists from different states about system of criminalistics itself as well as system of knowledge including criminalistics. Due to different circumstances (world outlook, political, social etc.) contemporary conception about science criminalistics is varying in many states. This fact is conditioned by scientific cognition multifactor dependence of all the mental life of social environment where scientist lives and works. (14–127) Historical individualities of Europe development during 20th century reflect in situations that today there are two essentially different opinions about the system of knowledge criminalistics has to be included in.

Seeking for more optimal classification of today's scientific knowledge about investigation of criminal offences lead scientists to two essentially different attitudes. The first attitude is based on the opinion that criminalistics has to be included in the system of scientific knowledge as scientific theory. It means that criminalistics has to be part of scientific system, id est, has to be totality of credible, logically consistent knowledge about definite sphere of reality.

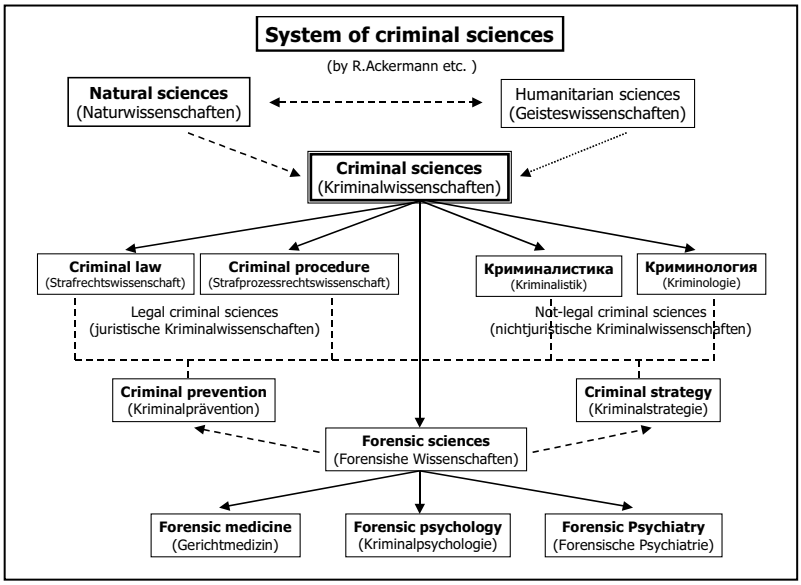
In former Soviet Union efforts to give criminalistics academic, id est, hard scientific nature, took place at the beginning of 50th last century. The first essential task was to find out nature of criminalistics in order to position it justly in the system of scientific knowledge. During this work 3 basic hypotheses were put forward:

1) criminalistics is a technical science. This opinion was expressed by Russian criminalists G. Manns, J. Zicer, M. Strogovich, M. Chelcov etc. Many Western Europe scientists agree with that. It also clears up the fact that criminalistics is not included as subject in educational programs of universities, but is only subject in police educational establishments.
2) Criminalistics is a dualistic (technical – law) science. The idea that criminalistics has double nature (natural sciences and criminal law) was developed during 50th of the last century. Main representatives of it were P. Tarasov-Radionov, N. Polansky, N. Vidrja, M. Ljubarsky, N. Dzhangeldin, A. Shljahov etc. (4, 11, 13)
3) Criminalistics is a law science. Some Russian scientists developed this idea at the beginning of 50th last century. Thanks to S. Mitrichov, A. Vinberg, G. Karnovich, V. Tanasevich etc. basics of the idea were formulated in 1952. (11) Further on much attention to motivate this opinion was paid by N. Selivanov, V. Koldin, N. Jablokov, V. Obrazcov, A. Eksarhopulo, and R. Belkin. Nowadays point of view of some researchers constructing their opinion mainly on "observation" formulated by R. Belkin (3–161–162) does not have steady foundation.

Each of three viewpoints about the nature of criminalistics had the rights to exist and appeared during specific historical period; each of them in its essence conformed to level of criminalistics as science during definite period of time. Insufficient argumentation of supporters of each viewpoint is based on lack of positioning criminalistics in one or another system of sciences.

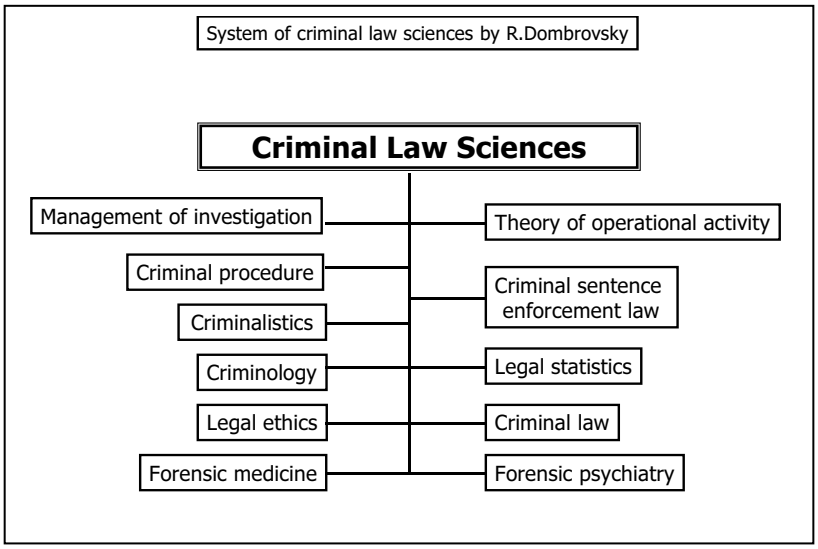
The other essentially different approach to positioning criminalistics in the system of scientific knowledge is concerned with establishing more substantial links with other sciences; these links become apparent during process of criminal offences investigation. As the base for describing such a system of scientific knowledge was put "observation" of practical activity of criminal offences investigation. The result of such approach is coming into being many versions of building up scientific knowledge systems in which criminalistics has its own place.

Researchers from Germany R. Ackermann, C. Koristka, R. Leonhardt, R. Nisse, I. Wirth during long-lasting discussions have come to conclusion that criminalistics has to be included in so-called criminal sciences branch. (1) As the base for conclusion about existence of abovementioned branch as well as its relations with other scientific branches the presumption about system of sciences, knowledge of which is used during combating crime, was taken. However, dichotomic division (law and not-law) of criminal sciences proposed by German colleagues is not enough clarifying scientific nature of criminalistics.



Criminalist from Latvia professor emeritus R. Dombrovsky, speaking about criminalistics as a kind of practical activity, speaks also about existence of so-called system of criminal law sciences. On his opinion system of criminal law sciences is formed by criminal law science, legal ethics, criminal procedure science, criminalistics, theory of operational activities, criminology, legal statistics, forensic

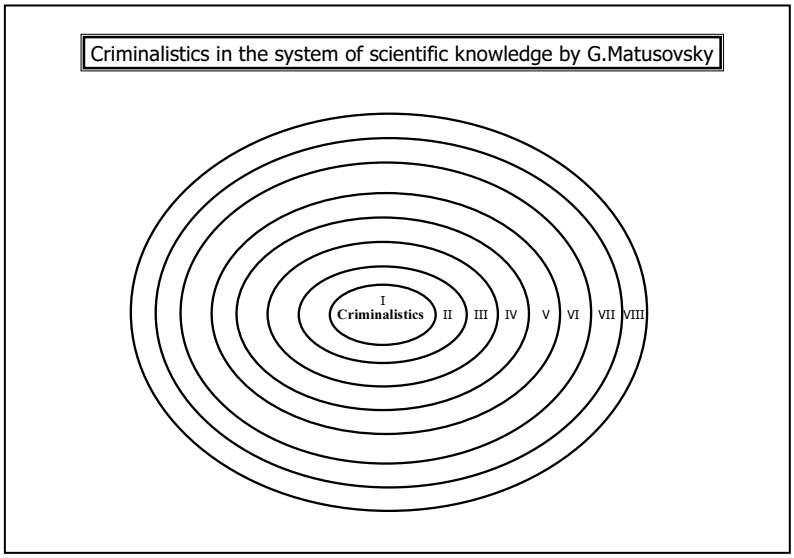
medicine, forensic psychology, forensic psychiatry, sentence enforcement law science and science of management of investigation. (6–73)



The base for such system of scientific knowledge in R. Dombrovsky opinion is form of realization criminal – judicial relations. In its turn criminal judicial relations are established by forms of practical activities, for example, criminal procedural, criminalistic, operational, sentence enforcement, psychological etc. (6–64)

There are also another viewpoints about nature of criminalistics and it's positioning in the system of scientific knowledge. For, example, Russia criminalist M. Kaminsky during his research has come to conclusion that criminalistics is legal branch of administration science; its field of research is regularities of reflection-information processes achieving goal (administration) during interactivity of criminal activity and activity to resolve and investigate crimes. Thus, according to the author, system of criminalistics is reincident system. (7–10, 13) This viewpoint is innovative and therefore does not have wide references among scientists.

In positioning criminalistics in the system of scientific knowledge inductive position is taken by Ukraine criminalist G. Matusovsky. On his opinion, system of scientific knowledge could be featured as geocentric system in the center of which criminalistics is positioned. While explaining the essence and necessity of such a structure of the scientific knowledge system, G. Matusovsky has pointed out that the given system reflects many-sided inter-scientific interactivity, in the center of which has to be separate branch of science (concerning which the scheme is built). (10–68)



Dividing “area of sciences” into sectors G.Matusovsky has given the following comments for each sector:

I – criminal law sciences,

II – generally theoretical and other legal sciences,

III – VI – sciences serving for legal sphere,

VII – legal sciences,

VIII – sciences about political and legal superstructure. (10–69–71)

Positioning criminalistics is affected also by existent classification of sciences in particular national scientific community. At the beginning of year 2001 in Latvia scientific community “fateful” event took place. By Latvia Science Board decision No. 2–3–1 (March 13, 2001) ‘’About forming of new subsections in legal sciences branch” subsection of legal sciences “Criminalistics and operational activity” was fixed *de jure*. Originator of the proposal A. Kavalieris has formulated the base for his position as follows: “Criminalistics and theory of operational activity studies regularities of forming criminals exposing proofs and information necessary for their finding and on the base of cognition of them develop new, according to Europe level methods and means for finding, fixing, examining, apprising and using in proving these proofs and information”. Here one can see that voluntary taking down of limits between criminalistics as science and operational activity has taken place. Necessity of such approach A. Kavalieris has based on kind of praxis of European states.(2)

Operational activity is a practical activity and the nature of operational activity is determined by political operational activity (Russian – *политический сыск*). History of coming into being of political operational activity is directly connected with history of rising one or another kind of power (power of strength, power of governor, state power etc.). Course of science development going by the name theory of operational activity violates historically established principles of science as social phenomena. As well as forming of subsection of legal sciences “Criminalistics and theory of operational activity” could be defined as obstruction in the development of criminalistics. It is doubtful whether one can agree that basic traditional means of operational activity cognition – slyness, occurrence and money (8–C.IV) – are scientific means. Analyzing content of operational activity basis Russia criminalist R. Belkin has mentioned that ““technization” of operational activity does not mean refusal from traditional means and ways of its realization: making use of police dogs, covert surveillance applied by officials of operational police (informants of operational (criminal) police), using of covert informants from criminals and other persons.” (3–188) The main methods of operational activities in their essence could be defined as overhearing, covertly glancing, provocation of people etc. Such methods of scientific cognition history of science has not developed and it is doubtful whether will develop. These methods in their content and form are not in line firstly with humanitarian values defined in basic principles of developing democratic society.

Abovementioned circumstances let us to conclude that establishment in legal sciences system of new subsection “Criminalistics and theory of operational activity”, means and methods of cognition of which are slyness, money and occurrence, overhearing and covertly glancing, provocations of people etc., is a failure with domino effect for science in Latvia.

Finally it should be marked that historical tendencies of forming criminalistic knowledge let us to formulate two main directions of the development of criminalistics:

1) Direction of purposeful summarizing of criminal offences investigation experience by scientific methods and means with the aim to create more effective means and ways of contemporary criminal offences investigation, id est, direction to utilitarian attitude to scientific knowledge. Following this direction of development of criminalistics disclosure of different traditions and opinions about specific features in using separate means and ways as well as on criminal offences investigation overall is possible.
2) Direction following which in order to describe and explain sphere of reality related with criminal offences investigation, purposeful work in developing theory of criminalistics will take place. This direction of criminalistics development is guided to perfection of knowledge in the area of applying criminal legal regulations.

♦ ♦ ♦

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Loginiai metodologiniai kriminalistikos apibūdinimo aspektai mokslo pažinimo sistemoje

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***Pagrindinės sąvokos**: kriminalistika, sisteminis metodologinis mokslas, specialistas.*

SANTRAUKA

Straipsnyje autoriai bando glaustai ir susistemintai apžvelgti atskirų mokslininkų nuomones apie kriminalistikos sistemą bei pateikti kriminalistikos definicijas. Remdamiesi XX a. įvairių šalių teisinę literatūra, autoriai samprotauja apie kriminalistikos vietą teisės mokslų sistemoje. Jų nuomone, tam turi įtakos ir istoriškai nusistovėjęs požiūris, kurį galima būtų suskirstyti į keletą pagrindinių raidos krypčių. Šis požiūris kriminalistiką apibūdina kaip:

1) kryptingą elgesio modelį, kaip nusikaltimų tyrimo rezultatą, „įrankį“ siekiant sukurti efektyvesnius būdus ir priemones šiuolaikiniams nusikaltimams tirti;

2) teorinio pobūdžio rekomendacijų sistemą, skirtą pareigūnų, tiriančių nusikaltimus, veiklai palengvinti.

Straipsnyje apžvelgiamas istorinis kriminalistikos sąvokos bei turinio interpretavimas pabrėžiant H. Grosso darbus. Atkreipiamas dėmesys į šio mokslininko XIX a. pabaigoje išleistą knygą, kurioje teikiamos rekomendacijas pareigūnams, tiriantiems nusikaltimus. Aiškinama Austrijos mokslininko nuomonė apie mokslo, kuris padeda tirti nusikaltimus, struktūrą, jos turinį.

Autoriai teigia, kad ilgą laiką kriminalistika buvo suvokiama tik kaip praktinis, o ne teorinis metodologinis mokslas. Dažniausiai šio mokslo žinias taikė institutai, laboratorijos ir pan. Dėl šių priežasčių kriminalistika nebuvo dėstoma ir Europos bei JAV universitetuose, atskirais atvejais – tik profesinėse aukštosiose mokyklose, pavyzdžiui, rengiančiose policijos pareigūnus.

Pasak autorių, kriminalistikos vietą teisės mokslų sistemoje siekiama nustatyti nuo H. Grosso laikų. Vieni mokslininkai teigia, kad kriminalistiką turėtume įtraukti į mokslinių žinių sistemą kaip mokslinę teoriją, t. y. kriminalistika turėtų būti mokslinės sistemos dalis.

Nagrinėjami sovietų laikų pastangų apibrėžti kriminalistikos vietą teisės mokslų sistemoje rezultatai. Tarybiniais laikais buvo siekiama nustatyti kriminalistikos prigimtį. Iškeltos 3 pagrindinės hipotezės:

1.Kriminalistika – techninis mokslas. Šios nuomonės laikėsi M. Strogovičius, M. Čelcovas ir kt.

2.Kriminalistika – dualistinis mokslas (techninis teisinis). 6-ajame XX a. dešimtmetyje šios idėjos laikėsi P. Tarasovas-Rodionovas, N. Polanskis ir kt.

3.Kriminalistika – teisės mokslas. Ši nuostata išplėtota praėjusio šimtmečio 6-ojo dešimtmečio pradžioje. Ją palaikė S. Mitričevas, A. Vinbergas, V. Koldinas ir kiti Rusijos mokslininkai.

Vokietijos mokslininkai R. Ackermannas, C. Koristka, R. Leonhardt'as ir kiti po ilgos diskusijos priėjo prie išvados, kad kriminalistika turėtų būti „priskirta" vadinamajai baudžiamosios pakraipos mokslų šakai.

Autoriai nurodo, kad egzistuoja ir kitų mokslininkų nuomonė apie kriminalistikos prigimtį. Rusijos mokslininkas M. Kaminskis, atlikęs tyrimus, teigia, kad kriminalistika – administracinės teisės mokslo šaka. Šio mokslininko nuomone, kriminalistikos sistema – reincidento sistema. Šis mokslinis požiūris yra naujoviškas, tad tarp mokslininkų neišplėtotas.

Baigdami autoriai nurodo, kad kriminalistikos sampratos modeliavimas yra neužbaigtas procesas, ir pateikia savo išvadas šiuo klausimu.