

MOKSLO STRAIPSNIAI

ACTUAL PROBLEMS OF CRIMINALISTICS

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Pateikta 2003 m. rugpjūčio 18 d.

Parengta spausdinti 2003 m. rugsėjo 30 d.

Recenzavo Lietuvos teisės universiteto mokslo prorektorius profesorius dr. Vidmantas Egidijus Kurapka ir šio Universiteto Teisės fakulteto Kriminalistikos katedros vedėjas profesorius dr. Hendryk Malevski

I n t r o d u c t i o n

The article determines actual problems of the criminalistic theory and practice that have arisen of late. Theoretical problems are considered within the general criminalistic theory's limits. One can also notice attempts to broaden criminalistics' bounds as well as to extend its subject. The author also studies problems of the system and language of criminalistics and possibility of broadening of the criminalistic tactical limits by widening it with the tactics of defence. One can mention among the problems of the criminalistic techniques problems of the "field criminalistics", an increase of the efficiency of criminalistic calculations, a need to perfect the means of search and investigation, a problem on revalue of graphology means, and set up means that are able to provide us with the information about criminal attempts. There are the following problems in tactics: a problem of psychological intensification in the criminalistic tactics by use of reflex games; problems on tactical decision taking and the problem of taking tactical risks, etc. The following problems attract attention in the field of criminalistic methods now: problems of existence reality for criminalistic description of crime; investigator's activity programming – on the investigation stages, – on the crime kinds; algorithm-making of separate criminalistic methods, etc.

The main part

Forming up the developed criminalistic theory marked the end of 70-th – beginning of 80-th of the last century. The main concepts and methodological meaning of the general theory of criminalistics, its content and structure, which were proposed by Professor R. S. Belkin in his well-known work named "*The Course of the Soviet Criminalistics*", were determined during that period. Such attention to the development of the general theory can be explained by the fact that it forms the methodological basis for all private directions in practical activity. Frankly speaking, one can hardly say that by the mentioned time separate concepts, meanings and institutions of the criminalistic science had finished their development. Even R. S. Belkin himself noticed a number of debatable and unsettled problems in criminalistics studied in the Course, which had both theoretical and applied nature. He mentioned some debatable problems in the Introduction to the second and third editions of his Course by underlining ability to enrich it with different theories, including enrichment and introduction clarity into parts of the general theory, as well as to enrich that with practical references. The state of affairs is quite logical and determined by internal and

external conditions in development of criminalistics. The internal conditions, first of all, include a relatively young age of the science that certainly lives in an unfinished period of its development. The external conditions include, firstly, the effects of the influence caused by changes in the society and state during last 15–20 years, secondly, the activity of the scientific development law, such as the law of integration and differentiation of scientific knowledge. Criminalistics has been strongly influenced by ongoing integration and differentiation processes because of its own predestination and social function. The integration and differentiation of the scientific knowledge, the continuous improvement of study means and methods, the change of criminality nature and, finally, as the result of that, the change of means and methods used by criminals have caused the current birth of new views on the system, structure, different doctrines, theoretical forms and meanings that build up the methodical basis of criminalistics and require its systematization. Though a sufficient number of works devoted to the study of the problems has been written of late, unsuitable attention has been paid to the special study of theoretical and methodological basis of criminalistics on a monographic level. The only exception can be found in R. S. Belkin's last works where he mainly stated his former views that were formed, as it was mentioned above, in the mid 70-th. It is true, problems of the theoretical and methodological nature have been mentioned in some Candidate dissertations on different problems of criminalistics, but as a rule, only incidentally and even then in conformity with any direction of the study.

The revision problem of a number of basic criminalistic definitions has been reborn since the beginning of the XXI century, when some criminalistic scientists made a proposal about broadening the limits of criminalistics' use. New terms became more usable, including: "the criminalistics of prosecution", "the criminalistics of defence", "the criminalistics of embezzlements", "the criminalistics of corruption", "the criminalistics of banking", etc. A number of statements have been appearing that say: "criminalistics has been dynamically differentiating" [1, p. 5]. One also proposes to broaden the bounds of criminalistics (science limits) by inserting into it, for example, sub-systems, such as "the tactics of defence" and "the prosecutor's tactics". That is followed with statements about the need to revise both the subject of criminalistic tactics and the whole subject of criminalistics [2, p. 10].

I would like to make a notice that there is neither "the criminalistics of banking" exists nor its possibility, as well as there is no another criminalistics anyway. Criminalistics is a joint science for all kinds of crimes whatever sphere of activity they affect. Terms "the criminalistics of banking" or "the criminalistics of corruption" are senseless as one doesn't mean any "special" criminalistics, but he only mentions the usage of its means, methods and recommendations during the detection, investigation and prevention of crimes either in banking or that use corrupt connections, etc.

We have already criticized views of different scientists on the new aspects that were proposed to put into criminalistics subject [3]. Here we'll mention the defence tactics, its coordination with the criminalistic tactics and criminalistics in general.

Speaking "<...> about defence as an object of criminalistics' study", M. O. Baev and O. Ya. Baev write that "the tactics of professional defence in a criminal trial is a sub-system of the criminalistic tactics that includes a scientifically developed system consisting of means of the criminalistic tactics (methods, operative combinations, recommendations), study and advocate's usage of the proving information to discharge or extenuate client's sentence, which also ensures client's rights and defends his/her interests in the conditions of potential or real counteractions from persons and organizations that are opposed to the advocate during their criminal procedure activity" [2, p. 12–14].

To solve the problem in a proper way if the defence tactics is a sub-system of the tactics of criminalistics one has to ensure if the sub-system is suitable for the purpose, aims and tasks of criminalistics.

Thus, the authors have proceeded from the assumption that the defence of a defendant (accused person) is an object of the criminalistic study when they presume the defence tactics being a sub-system of the tactics of criminalistics. One hardly agrees with such an assumption, even because there are only two kinds of human activity that are

criminalistics' objects: a criminal activity and an activity on detecting and investigating crimes. Criminalistics studies the functional part of that activity and the special appropriateness that directs those kinds of activity. Criminalistics doesn't studies other appropriateness and activity (prosecutor's activity, solicitor's activity, etc.). The activity of defender is not also a part of any object. The defence of a defendant (accused person) is an object of another science.

One can easily notice the difference in the purposes of criminalistics and defence. The aim and tasks of criminalistics, it's a common knowledge, are further the fighting crimes. Advocate's aims and tasks are not the fighting crimes, but, as the above-mentioned authors truly say, they include getting information with a purpose *to discharge or extenuate client's sentence and ensure client's rights and defend his/her interests* (author's Italic – T. A.). That is defender's main criminal procedure function. Criminalistics has another function – the scientific provision of fighting crimes. Most of all, the authors absolutely truly notice that advocate's activity is different from detective's one, whose mission is to fight crimes, and whose professional interests, "as a rule, are opposite to the interests of defender" [2, p. 16]. So what is the sub-system of the defence tactics within the limits of criminalistics that was mentioned above?

It goes without saying that there is a real need in the development of defence tactics and the above-mentioned authors have already done the first steps in this direction. Surely the tactics of criminalistics will be of its importance. But if one uses scientific propositions in the defence tactics, that doesn't make any sense in saying that the tactics is a sub-system of it. One can easily say that there are propositions from the judicial psychology, forensic psychiatry, judicial ethics, and others laying in the basis of the defence tactics. But, nevertheless, it hasn't become its sub-system. There is really a sphere of problems in the defence tactics that can't be settled by any science, except criminalistics. They are the very specific problems of the criminalistic tactics. The thesis only proves the availability of criminalistic essence in the tactics of defence and leaves the question unsettled if the criminalistic essence exhausts the whole content of the defence tactics.

The opinion about defence tactics as a sub-system of the criminalistic tactics, as we think, will only impede its progress and limit its recommendations.

To summarize the above-mentioned statements, one has to make a conclusion that as the defence tactics is mostly become apparent during the investigation stage, where you can see trial's controversy. Though the defence tactics should be developed on that stage within the investigation. We see the future of its development in working out a subject that can be called, for example, "The theory and practice of advocate's activity". It is possible that the subject will be able to get a separate science status in the future. It's common knowledge that some new sciences were born from such training subjects.

And finally, last but not least. We think that working out and developing the defence tactics, as a separate subject and a science in the future, will assist in perfecting the tactics and methods of criminalistics and also clean "its propositions and recommendations from the "accusatory" accentuating" [4, p. 202].

There are a couple of words about innovations in the system of criminalistics.

It is possible to say that the system of criminalistics has been changing since the time when the first works devoted to the problems on founding criminalistics theory were written. It worth mentioning B.M. Shaver's work called "*The Subject and Method of the Soviet Criminalistics*" where he made a proposal to divide criminalistics into general and special parts. It's common knowledge that the division had existed until 1958, and then a trinomial system of science was adopted, and, finally (in 1970), there was a quadrilateral system adopted that included: the methodology of criminalistics, the criminalistic techniques, the tactics of criminalistics and the criminalistic methods. However, only in the end of 70-th – beginning of 80-th the question became a moot point when a number of works [7] proposed a five-element system and the fifth part was called "the organization of crime investigation". R. S. Belkin correctly criticized the position and wrote: "the artificiality of introduction the part into the scientific system became clear even during a cursory acquaintance with its content

<...>. There is nothing principally new either for the science or for the training subject in that part. That is the content of traditional parts of criminalistics<...>. But the problem is even not in an accidental and groundless set of elements of the part<...>. The organization is an integral part in the use of criminalistic recommendations that can't be separated from other kinds of that activity" [4, p. 73–74].

Another problem of criminalistics is a linguistic problem. The sphere of studied concepts and definitions has been increasing of late. Everybody who knows our textbook "Criminalistics" [6] has had to notice that two parts of the textbook traditionally named as the criminalistic techniques and the tactics of criminalistics were called a little bit different: "the criminalistic techniques and technology" and "the criminalistic tactics and technology". A new term – technology – was introduced (It was introduced in criminalistics for the first time by V. A. Obratsov) and it seems to come true. In accordance with the authors of textbook, one can mention the tactics when it works as a mean for fighting counteractions against the investigator. If you think like this, one can truly speak about the tactics of interrogation, but hardly about the tactics of examination. It's correct to mention the tactics of search, but the tactics of getting samples for comparative inquiry is incorrect if there are no counteractions during investigative actions.

Tactics can be characterized by an opportunity on making a choice of actions, but technology has the same description. Technology is the mostly expedient and effective method on conducting a kind of labor activity in a certain sequence when the executor doesn't meet a counteraction. Just because the authors of textbook thought it was necessary to include the proper changes in the titles of some parts.

However, the linguistic problem isn't only within new criminalistic terms and definitions introduction that are explained by the study of new aspects of old definitions, when the term is useful for object's quality designation. The process has the reverse side. I would like to say that criminalistics has been littering up with unnecessary terms having no semantic load but pretending to get a recess in the scientific hierarchy. Such terms are, for example, "the criminalistic activity", "the criminalistic information", "the criminalistic relationships", etc.

Without dwelling on the study of these terms, one has to notice that they were quit in detail criticized in R. S. Belkin's last work "*Criminalistics: Problems of Today*" (Moscow, 2001). Here we'll study the terms and definitions of the last two years. They are, according to our opinion, the following definitions: "social-legal descriptions", "operational-search descriptions" and "an operational-search identification". Though, the last two terms are not from the criminalistic science, we think that it's necessary to go into detail of them, because criminalistic descriptions form the base of the definitions.

A. M. Kustov, the author of the first of the above-mentioned terms, has tried to include information practically from all sciences, which a detective has to work with during crime detection and investigation, as elements of the social-legal descriptions. In accordance with his opinion, here *descriptions* (author's Italic – T. A.) of social, psychological, criminal law, operational-search, criminalistics and other crime's aspects must be included. To say nothing of the proposed elements' bulk, the complicity and exactly practical impossibility to generalize different knowledge about typical in that abstraction, a question can be immediately risen - what science from the mentioned ones (or from not mentioned) has to work out the description and what science will take didactical responsibility to deliver the essence and meaning of that description to students? That is first. Then, the second, the description (either systemized or not) is a method but not an element of descriptions (criminalistic, criminological, etc.).

I think that there is no need in all those innovations. The "social-psychological description" doesn't exist. All that is nothing else but the use of information from different sciences in the detective practice. That doesn't mean the information becomes the social-psychological one. The author, probably, is taking a great interest in constructing some terms and definitions that is popular nowadays.

As concerning the operational search descriptions, if one attentively studies their content, he easily notices that their elements are, in fact, elements of criminal law,

criminological and criminalistics descriptions, and more exactly – they are the information of the criminal law, criminology, criminalistics and the criminal statistics, which is absolutely wrong for the scientific abstraction (as every crime description is a scientific abstraction, because it reflects only typical and stable crime elements). There is nothing of the operational search nature in such descriptions, and they have not only practical but scientific sense.

And, finally, one has to mention the operational search identification. I have a general opinion that the development of operational search activity follows the development of criminalistics. I can't see anything dangerous in that fact as the scientific genesis knows a lot of such examples. However, it shouldn't mean that everything once developed by criminalistics must smoothly move without any changes and amendments to such a sphere of scientific knowledge as the operational search activity.

You and I know that the criminalistic identification means a specific identity, a self-equality of an object (an event, an occurrence). That shows the difference between the criminalistic identification and identifications in physics, chemistry, biology and other sciences, where a similarity is interpreted as identification. It's common knowledge, that there are four forms of the criminalistic identification: the expert form, the investigative form, the operational form and the form of legal proceedings. I underline them as forms of the criminalistic identification. What is finally the operational search identification mentioned here? I have studied the definition proposed by authors and can state that it means only a form of the criminalistic identification, but not any kind of the operational search identification.

Speaking about a part of criminalistics, the criminalistic techniques, one can notice the increasing significance of "the field criminalistics", i.e. direct use of criminalistic means and methods on a crime scene. There is a problem on conducting forensic examinations on the spot. A discussion on so-called situational examinations (a kind of diagnostic expertise) is also ongoing.

Shorten the time between crime detecting and investigating demands increase the efficiency of criminalistic registrations and stir up their use during the preliminary stage of investigation. The importance of a complex information support for operative detective groups working on a crime scene has been increasing accordingly.

Means for search and detectors surely have to be improved. Speaking about the search one means developing distinctive "geography", i.e. spotting the wanted persons' locations, checking ways of investigation and trial evasion by occupancy, age and sex. Detective's investigative work, including actions on perfecting techniques of "the physical description of persons", also has to be generally improved.

There is a need in development and experimental works on searching instruments: introsopes (from Latin *intro* – inside and *scopio* – to see) that allow having a visual observation of objects and processes inside optically opaque bodies, in opaque mediums (matters) by transformation of a visually invisible studied object's image that was received with infra-red, X-ray and other rays (radiated or reflected by the object) into a visual image on introscope's screen; thermograph (using different means for recording thermo field (infra-red radiation) as a searching device.

There is also a problem on graphology's reevaluation on today's agenda. Scientific methods of handwriting's sex differentiation have been developed. Symptoms of writing documents in ill conditions, either psychological or physical or intoxicated by narcotics and stimulators, can be detected. We have got hopeful results in detecting document writer's age and other personal qualities. That isn't out of the question, that other graphology propositions can become true, except, surely, unscientific ones.

If it's based on the knowledge of information about crime and criminal origin's conformity to natural laws, criminalistics has to take up developing means for finding out information about criminal encroachments as a result of criminal act reflection in the surroundings.

Now there is the only kind of such means – they are means for objects protection against criminal encroachments, including different sorts of traps and objects defending means against forgery.

Now there is a tendency on increasing psychological aspects in the criminalistic tactics within its frame. The theory of reflex games (Don't confuse them with the mathematical games theory!) seems to be a perspective one in that direction.

There are also some actual problems on the criminalistic tactics, except the problem of reflex management of the enemy. They are:

- The problem on tactical decision making;
- The problem of investigator's activity in conditions of informative uncertainty and lack, i.e. the problem of tactical risks;
- The complex of problems connected with the judicial investigation tactics' development.

There are some problems on the criminalistics methods attracting our attention:

- The reality problem on the criminalistic description of crime;
- The problem on programming investigator's activity: by different stages of investigation, by different kinds of crimes;
- The problem of private criminalistic methods algorithm-making, etc.

Conclusions

There is an entire row of problems of the theoretical and practical nature that have appeared at the current stage of criminalistics. The most attention is paid among other theoretical problems to broaden criminalistics' bounds and revision of its subject. By analyzing all proposals published in the special literature, the author of the article could make a conclusion that there is no need on broadening criminalistics' limits by introducing separate parts in it, for example, the tactics of defence, that are the objects of other sciences knowledge. There are also problems of practical use of criminalistics achievements in all its parts – the criminalistic techniques, the criminalistic tactics and the criminalistic methods – mentioned in the article.



BIBLIOGRAPHY AND NOTES

1. **Zorin G. A., Zorina M. G., Zorin R. G.** Possibilities of Criminalistic Analysis during the Process of Preliminary Investigation, State Prosecution and Professional Defence on Criminal Cases. – Moscow, 2001.
2. **Baev M. O., Baev O. Y.** Defence against the Prosecution in a Criminal Trial. – Voronezh, 1995.
3. **Averjanova T. V.** The Development of R.S. Belkin's Ideas on the Subject of Criminalistics // The Role and Importance of R.S. Belkin's Activity in Founding and Development of Criminalistics. – Moscow, 2002.
4. **Belkin R. S.** Criminalistics: Problems of Today. – Moscow, 2001.
5. Mainly there were either A. G. Philippov's editor works or his articles.
6. **Averjanova T. V., Belkin R. S., Koruhov J. G., Rossinskaya E. R.** Criminalistics: the Textbook. – Moscow, 1999.



Aktulios kriminalistikos problemos

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SANTRAUKA

Straipsnyje nagrinėjamos pastaraisiais metais kilusios aktualios kriminalistikos teorijos ir praktikos problemos. Teorinės problemos nagrinėjamos neperžengiant bendrosios kriminalistikos teorijos ribų bei svarstoma galimybė praplėsti kriminalistikos dalyko ribas.

Autorė nagrinėja kriminalistikos sistemos bei jos kalbos klausimus ir galimybę praplėsti kriminalistikos taktikos ribas, įtraukiant į ją gynybos taktikos klausimus. Tarp kriminalistikos technikos problemų galima nurodyti „lauko kriminalistikos problemas“; kriminalistinių įskaitų efektyvumo kėlimą; būtinybę tobulinti paieškos priemones; iš naujo įvertinti grafologijos galimybes; priemonių, užtikrinančių informacijos apie nusikalstamus pasikėsinimus, rengimą. Taktikos srityje egzistuoja tokios problemos kaip kriminalistikos taktikos psychologizavimas panaudojant refleksinius žaidimus; taktinio sprendimo priėmimas ir taktinė rizika ir kt. Kriminalistikos metodikos srityje dėmesys sutelkiamas į realių kriminalistinės nusikaltimų charakteristikos egzistavimo problemą; tardytojo veiksmų nustatymą pagal tyrimo etapus, pagal nusikaltimų rūšis, konkrečių kriminalistikos metodikų algoritmų sudarymą ir kt.

