THE RELATIONSHIP BETWEEN CRIMINALISTICS AND CRIMINAL LAW AND ITS IMPORTANCE AS A NON-LEGAL SCIENCE OF CRIMINAL LAW IN THE TEACHING OF CRIMINAL LAW AT FACULTIES OF LAW (IN THE CZECH REPUBLIC)[1]

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Annotation

This contribution deals with the close connection and importance of criminalistics and its relationship to criminal procedural law and related matters of proving. Therefore, it is considered whether the law enforcement authorities (police authority, public prosecutor, court) should have, respectively have knowledge of criminalistics and to what scope. For this reason, contribution is looking for answer to the question of whether so criminalistics should be in the course of teaching in faculties of law in the Czech Republic within the study program subject mandatory or optional, and also on how to staff provide forensic education.

Keywords: Criminalistics, criminal procedural law, evidence, evidence, law enforcement authorities, police authority, public prosecutor, court, faculty of law, teaching of criminalistics, staffing of teaching.

I.

Contemporary criminalistics as a discipline is a generally recognized and established scientific discipline with a rich theoretical basis and a wide range of

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scientific knowledge used in judicial, police and security practice.

At the most general level, criminalistics can be defined as a separate non-legal science, the object of which is to investigate the origin, course and manifestations or consequences of criminalistical relevant phenomena and events, with the aim of this examination using of specific criminalistic methods is help identify the perpetrator of crime[2]. Knowledge from the field of criminalistics can also be applied in the prevention of crime, especially in the so-called situational prevention[3].

Criminalistics can be divided into several parts, while the specific method of division always depends on the author[4]. In general, however, we can find a consensus on the existence of four areas that criminalistics deals with. First of all, it is a general criminalistical theory, which deals mainly with the definition of the concept and subject of criminalistics and also with the interpretation of some concepts relevant to criminalistics, such as the criminalistic trace. The next part, called the forensic technique, then deals with individual methods that help in fulfilling the purpose of criminalistics. It will be, for example, forensic biology, trasology, mechanoscopy or dactyloscopy. However, the register of individual methods used in criminology is much broader, constantly expanding depending on the progress of science and technology. The third part of criminalistics is referred to as criminalistic tactics and deals with the methodology of the procedure of the police authority dealing with investigations in individual acts of criminal proceedings. This can be, for example, a procedure for interrogation, search or recognition of persons or things. The last part, called the forensic methodology, then focuses on the specifics of the investigation of individual types of crime, such as violent or property crime, etc.

Although in the case of criminalistics it is a separate discipline, it is traditionally classified as the so-called „auxiliary sciences of criminal law", alongside criminology and forensic disciplines such as forensic engineering, medicine, psychology and psychiatry or victimology and penology. From this, too, it is possible to infer the position of a criminalistics, who is an independent scientific discipline, but her existence is closely connected with criminal law. Were

2 Musil, J., Konrád, Z., Suchánek, J. (2004). *Kriminalistika*. 6.

3 Also see e. g. Tomášek, J. (2019). *Úvod do kriminologie.* 186 and next.

4 Probably the most common is the division of criminalistics into three basic parts – criminalitical techniques, criminalistical tactics and criminalistical methodology, see e. g. Pješčak, J. a kol. (1981). *Kriminalistika.* 17. However, other authors offer a different view of the division of criminalistics, for example, the author's team led by doc. Svoboda recognizes only two parts of criminalistics – criminalistical techniques and criminalistical tactics, see: Svoboda, I. a kol. (2016). *Kriminalistika.* 30.

it not for criminal law (and with it efforts to detect perpetrators of illegal acts and subsequently punish them according to the law), there would be no criminalistics either.

The relationship between criminalistics and criminal law dates back to its origin, ie from the 19th century[5]. Since then, criminalistics has been perceived as a discipline that helped fulfill the purpose of criminal proceedings, i.e. to find out perpetrators of crime and protect society from these individuals.

The connection between criminal law and criminalistics can also be observed in the legal regulation of certain procedural acts of criminal proceedings, which were incorporated into the text of the legal regulation by an amendment to the Criminal Procedure Code (Act No. 141/1961 Coll.) implemented by Act No. 265/2001 Coll., with effect since 1 January 2002, it is a confrontation, recognition, reconstruction or on-site inspection.

Since that date, controversies have ended between whether these are „only" criminalistic methods or whether it is also evidence in the sense of the Criminal Procedure Code. Thus, although these are criminalistic methods, they are also criminal proceedings. The list of special methods of proof in the Criminal Procedure Code is, of course, not exhaustive.

There have been long-standing discussions as to whether other criminal methods that are widely used in practice, such as dactyloscopy or the odor identification method, should not become part of the legislation contained in the Criminal Procedure Code. Arguments against this approach are based on the fact that forensic methods are constantly evolving and working with new knowledge, which is especially striking in forensic DNA research. If this were part of the legislation, it would not be able to respond effectively to these changes due to the length and often complexity of the legislative process.

It follows from the above that forensic procedures and methods are directly reflected in the search, seizure and use of various means of evidence. The Criminal Procedure Code does not regulate the use of all criminalistic methods, nor does it stipulate a procedure for the application of tactical procedures and technical means used in criminalistics. In relation to the taking of evidence, it only regulates some fundamental and binding procedures, which are generally relevant[6] and are always binding also for forensic methodological and

5 Straus, J., Vavera, F. a kol. (2012). *Dějiny kriminalistiky*. 21.

6 E. g. § 93 para. 2 of the Criminal Procedure Code states that if the identity of a person or thing is to be ascertained by interrogation, the accused is invited to describe it, only then is the person or thing to be shown to him, usually between several persons and several things of the same kind.

tactical-technical procedures. Forensic methods, procedures and technical means are formed, implemented and applied within the limits set by the Criminal Procedure Code. Their procedural regulation is often only general and a substantial part of them is not regulated at all in the Criminal Procedure Code, as already mentioned[7]. However, it cannot be inferred from this that if a criminalistic method is not regulated in the Criminal Procedure Code, it is illegal and therefore inadmissible from a procedural point of view[8].

Not only from the above, we deduce the existence of a mutual bond between criminal law on the one hand and criminalistics on the other. It is possible to state that without criminalistics, the purpose of criminal proceedings could not be fulfilled.

II.

With regard to the importance of criminalistics for criminal proceedings, it is clear that law enforcement authorities, which according to § 12 par. 1 of the Criminal Procedure Code, the police authority, the public prosecutor and the court meet with forensics in their practical activities practically on a daily basis. However, the question remains the degree of familiarity of individual law enforcement authority with it. There is no doubt that the police authority is closest to criminalistics, but the public prosecutor or judge must also have knowledge of this area.

In the case of the public prosecutor, who is in charge of the entire preparatory proceedings and can give instructions to the police authority, it is really appropriate for him to have a good knowledge of criminalistics. The public prosecutor, as a subject of criminal proceedings, has the opportunity to exercise his influence over criminal proceedings, and for this purpose the Criminal Procedure Code provides him with certain procedural rights. As follows from § 174 of the Criminal Procedure Code, the public prosecutor is entitled to order the police authority to perform certain acts which he is obliged to perform, to participate in the performance of certain procedural acts, or to perform these individual acts himself and he is also allowed to personally conduct the entire

[7] They are very often regulated, for example, in internal regulatory instruction of the Police of the Czech Republic, such as binding instruction No. 100/2001 or binding instruction No. 250/2013.

[8] E. g. sampling and comparison of odor traces by the method of odor cans are not regulated in the Criminal Procedure Code and yet they are commonly used in practice today. However, we can still encounter certain doubts in relation to their use in criminal proceedings, see: Roman, Š. (1996). K problematice využití tzv. pachových konzerv v trestním řízení. *Bulletin advokacie*. 8, 20–25.

investigation. In this way, it supervises the activities of the police authority in order to maintain the legality of the preparatory proceedings conducted by the police authority. In our opinion, the exercise of these procedural rights of the public prosecutor without proper knowledge of criminalistics is not possible.

Equally important is the knowledge of criminalistics for judges. All evidence against the defendant is taken in the main trial, as this is the focus of the entire criminal proceedings. As a manifestation of the principle of immediacy, all evidence is taken here so that the judge can become acquainted with it immediately and so that he can assess whether it is sufficient for a decision on guilt and punishment or not. Much of the evidence is usually obtained by one of the forensic methods, and expert opinions and expertises on some forensically relevant issues are also very common. Therefore, the judge should have a deeper awareness of criminalistics as a whole, of individual forensic methods and terms that are used in criminalistics, so that he can decide on the guilt or innocence of the accused or return the case to the public prosecutor for further investigation.

III.

The relationship between the law enforcement authorities and criminalistics is also related to the relationship between the general definition of evidence in the sense of criminal law pursuant to § 89 par. 2 of the Criminal Procedure Code and the term criminalistic trace used in criminalistics.

Pursuant to the above-mentioned provision of the Criminal Procedure Code, all that can contribute to the clarification of the case can serve as evidence, especially the testimony of the accused and witnesses, expert opinions or expertises, things and documents important for criminal proceedings and searches (this is a demonstrative list of specific, most frequently used, means of evidence).

The fact that this list of evidence does not represent anything new is proved by the Austrian Criminal Procedure Code of 23 May 1873 No. 119 col. It included among the means of evidence the subject of the search, which can be either any factual evidence or persons on whom the crime was committed or who committed it themselves. Another means of evidence are documents, which represent a special form of factual evidence. The subject matter of the search and the documents constitute factual evidence. Other means of evidence include an expert, or his opinion, and the examination of a witness and

the accused. The means of evidence mentioned are personal evidence[9].

The scope of evidence referred to in § 89, par. 2 of the Criminal Procedure Code may be supplemented by any other means of evidence that may contribute to the clarification of the matter. As each criminal case is completely individual, an exhaustive list of means of evidence could cause complications in practice. That list could prevent the taking of evidence only because it will not be possible to place it in one of those categories of evidence. Thus, no evidence can be ruled out a priori because it is not mentioned in § 89 par. 2 of the Criminal Procedure Code. Therefore, if the means of evidence does not violate the law, not only the Criminal Procedure Code, nor does it circumvent it, and if it is capable of proving facts important for criminal proceedings, it can be used as evidence.

Forensic science generally understands a trace as a change that results from the interaction of two or more objects[10]. Typically, firstly coming to mind, mechanoscopic traces that come from the action of a particular instrument. However, the tracks also include, for example, memory tracks, which we obtain by interrogating a person. However, for criminalistics are important only those traces that are criminalistically relevant. Not all of these traces need to be made at the same time as evidence in the main trial, sometimes, for example, they are only an indication to obtain other evidence.

Given that the Criminal Procedure Code is based on a broad definition of the term „evidence", which can be practically anything, it will largely overlap with the term „trace" as used in criminalistics.

It is clear that the field of criminalistics deserves further research. Given that the issue of criminalistics is encountered primarily by law enforcement authorities, emphasis must be placed on their education in this area as well.

The question that is related to this and is the main topic of our article is whether criminalistics should be taught at law faculties in the Czech Republic as a compulsory subject or a compulsory elective subject. Here, however, another fundamental question arises as to whether the law faculties in this case would have sufficient staffing to teach criminalistics as a compulsory subject.

IV.

If we focus on the relationship between criminalistics as an independent scientific discipline and criminal proceedings, in which the findings of this

9 Storch, F. (1897). *Řízení trestní rakouské*. II. díl. 79 and next.
10 Musil, J., Konrád, Z., Suchánek, J. (2004). *Kriminalistika*. 75.

science are applied, the basic problematic area will be knowledge about criminalistical science. As has been noted on several occasions, law enforcement authorities most often come into contact with criminalistics, and therefore due emphasis must be placed on their education in this area as well.

With criminalistics comes most often in touch the individual members of the police authority most often operating within the Criminal Police and Investigation Service (hereinafter also „SKPV") of the Police of the Czech Republic. Pursuant to § 7, sec. 1 of the Act on the Employment of Members of the Security Forces (Act No. 361/2003 Coll.), there is a requirement that members of the SKPV must have at least a university degree in a bachelor's or master's degree program, but nowhere is it specified specific study programs should be discussed. It is suggested that, of course, a bachelor's or master's degree provided at law faculties would be most appropriate. For example The Faculty of Law of Masaryk University in Brno offers a bachelor's degree program „Theory and practice of Criminal and Administrative Process". Its graduates will acquire competencies that will enable them to apply to those branches of public administration that are active in criminal, misdemeanor or other administrative-delict proceedings, thanks to the fact that they have extensive and deep knowledge, especially in substantive and procedural criminal law, administrative substantive and procedural law, criminalistics or criminology.

Another variant is the bachelor's study program offered by the Faculty of Security-Law of the Police Academy in Prague „Criminalistics and other forensic disciplines". Unfortunately, a significant proportion of police officers working within this service and engaged in criminal proceedings (investigations) are often graduates with forensics and law in general unrelated fields, such as teaching, electrical engineering or mechanical engineering. Therefore, SKPV police officers should be particularly thoroughly acquainted with the issues of criminalistics, criminolalistic science and criminal law.

However, many of these police officers are based on the so-called „habit". There is nothing wrong with „habit" and it is needed. The transfer of professional experience by older colleagues directly in specific departments has always had the greatest benefit, which I can confirm on my own experience. However, if it is not supplemented by one's own interest in further self-education and deepening the acquired knowledge for the purpose of professional growth of a police officer, the acquired „habit" can lead to a certain rigidity.

Another problematic issue related to education in area of criminalistics is the education of future public prosecutors and judges. Here we find relatively large gaps, because a significant part of these people during their university

studies do not come with criminalistics, respectively its partial practical aspects in contact with each other and the first acquaintance with it usually takes place at the Judicial Academy, which mainly prepares and organizes educational events in the training of judicial and legal trainees and also provides continuous training of judges, public prosecutors and other persons working in the justice. Lecturers are primarily experts from practice, but these seminars already address specific issues (e. g. interview with a child, communication with people with sensory disabilities or methods of detecting grant fraud[11]). However, the theoretical foundations and knowledge of basic terminology will not replace this, so those trainees in this area must rely primarily on self-study.

V.

Therefore, in our opinion, it would be appropriate to consider the issue of educating future lawyers and law enforcement authorities in general in the field of criminalistics and other forensic disciplines and sciences. To this purpose, it would be appropriate to focus on the history of teaching criminalistics at law faculties, as well as on possible perspectives for the future.

In fact, this brings us to the fundamental question of our contribution concerning whether the teaching of criminalistics at law faculties should be included among the compulsory subjects or should be among the compulsory elective subjects.

In the introduction, it is appropriate to briefly mention the historical development of teaching criminalistics at the Czech law faculties and also about some institutions that deal with criminalistics and related issues (especially other forensic disciplines) in the Czech Republic.

As some publications dealing with the history of criminalistics state, soon after the establishment of this field of science, efforts began to be made to include criminalistics in the curricula of law faculties and to create university workplaces that would scientifically develop this discipline[12]. In our country was criminalistics firstly teached at Prague Faculty of Law, which was credited to August Miřička, Professor of Criminal Law. Miřička was also the founder of the Institute of Criminalistics (1926), where he also began his first criminology course[13]. In the 1920s, the Faculty of Law of Charles University also taught other disciplines that are closely related to criminalistics, such as forensic medicine

11 https://www.jacz.cz/vzdelavani/seznam-seminaru

12 Straus, J., Vavera, F. a kol. (2012). *Dějiny kriminalistiky*. 159. Same Straus, J., Vavera, F. (2005). Dějiny československé kriminalistiky slovem i obrazem II. *Praha: Police History*, 163.

13 Straus, J., Vavera, F. a kol. (2012). *Dějiny kriminalistiky*. 161.

for lawyers and forensic psychiatry[14]. In 1964, a criminalistic department was created within the Department of Criminal Law of the Prague Faculty of Law, and criminalistics became a compulsory subject. Two years later, an independent department of criminalistics was established, headed by Ján Pješčak, Nestor of Czech and hence Czechoslovak criminalistics[15].

Since 1974, criminalistics has also been taught at the Faculty of Law in Brno. At this time, however, the focus of teaching criminology was primarily the University of the National Security Corps, so its teaching at the Faculty of Law of Masaryk University in Brno did not reach such a tradition as at the Faculty of Law in Prague. At present, criminalistics is taught at the Faculty of Law of Masaryk University in Brno only as a compulsory elective subject with a limited capacity of approximately 30 students. The situation is currently similar at the other two Czech faculties of law, the Faculty of Law of the University of West Bohemia in Pilsen and the Faculty of Law of Palacký University in Olomouc, where criminology is also taught only as a compulsory elective subject[16].

Other institutions dealing with criminalistics in the Czech Republic include the Institute of Criminalistics in Prague and the Institute for Criminology and Social Prevention, also in Prague. As already outlined in one of the previous parts of the article, the teaching of criminalistics is currently mainly dealt with by the Police Academy in Prague, which offers a bachelor's degree program (with the possibility of a subsequent master's degree) focused on criminalisitcs. In our opinion, however, such a situation is not sufficient for the needs of practice and the teaching of criminalistics at law faculties should be supported.

With regard to all of the above, it is evident that this issue does not need to be discussed and criminalistics must have a well-deserved place in the curriculum as a compulsory subject, because without its knowledge it is not possible to understand the deeper context of criminal law, respectively. criminal proceedings, and in particular the evidence-related parts thereof.

Related to this is another question posed above, how to staff the teaching of criminalistics, and finding an answer to this question is much more complicated than it might seem at first glance. Persons encountering criminalistics in their practice, having sufficient practical but also theoretical knowledge, operating, for example, in the position of law enforcement authorities, lawyers or assistant judges at various levels of general courts and the Constitutional Court,

14 Straus, J., Vavera, F. a kol. (2012). *Dějiny kriminalistiky*. 162.
15 Straus, J., Vavera, F. a kol. (2012). *Dějiny kriminalistiky*. 164–165.
16 Straus, J., Vavera, F. a kol. (2012). *Dějiny kriminalistiky*. 167–169.

may not have sufficient pedagogical skills and competences.

Another possibility is to „reach" the ranks of academics working in parallel in the practice in which they encounter criminalistics, as mentioned above. Although there are more such persons in the level of academics dealing with criminal law, there may not always be a sufficient number of them to be staffed in the teaching of criminalistics. Another problematic aspect may be that many academics have not been working in the judiciary for a long time, so they may not always be familiar with all the modern trends that occur in criminalistics, as a very dynamically developing discipline.

Finally, it is possible to summarize, perhaps a little simply, in one sentence, that it is not possible to teach criminalistics without their theoretical and practical knowledge resulting from contact with practice and practical background, and at the same time without sufficient pedagogical skills.

VI.

In conclusion, the relationship between criminalistics and criminal law is a relationship of addiction, where criminal law would be very difficult to succeed without criminalistics, because criminalistics helps to fulfill its purpose and vice versa criminalistics would be very difficult to maintain its meaning and its validity. These are therefore two closely related areas that complement each other and together help to maintain order in society.

With this in mind, it can be stated again that knowledge of criminalistics is very essential for all those working in the field of criminal justice, especially law enforcement authorities as defined above, but also at least a basic orientation in criminalistics is important also for attorneys who also offer defense in criminal proceedings as part of their services.

Therefore, in our opinion, it would be very appropriate for criminalistics to become a compulsory subject within the curriculum of all law faculties, because only in this way is it possible to prepare future lawyers for their work in practice where criminalistics (especially if they deal with criminal law), come into contact sooner or later. However, this thesis has more problematic aspects, as outlined above, especially the issue of staffing the teaching of this subject.

KRIMINALISTIKOS IR BAUDŽIAMOSIOS TEISĖS RYŠYS IR JOS KAIP NE BAUDŽIAMOSIOS TEISĖS MOKSLO REIKŠMĖ TEISĖS FAKULTETUOSE (ČEKIJOS RESPUBLIKOS) BAUDŽIAMOSIOS TEISĖS MOKYMUOSE

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Santrauka

Šiame straipsnyje kalbama apie glaudų kriminalistikos ryšį ir svarbą bei jos santykį su baudžiamojo proceso teise ir su ja susijusiais įrodinėjimo dalykais. Todėl svarstoma, ar teisėsaugos institucijos (policija, prokuroras, teismas) turi ar turėtų atitinkamai turėti kriminalistikos žinių ir kokios apimties. Dėl šios priežasties ieškoma atsakymo į klausimą, ar kriminalistika turėtų būti mokymo sudėtinė dalis Čekijos teisės fakultetuose pagal studijų juose patvirtintas programas, ar tai turėtų būti privalomas arba neprivalomas dalykas, taip pat apie tai, kaip į mokymus turėtų būti įtrauktas teismo ekspertų personalas.

Raktiniai žodžiai: Kriminalistika, baudžiamojo proceso teisė, įrodymai, teisėsaugos institucijos, policija, prokuroras, teismas, teisės fakultetas, kriminalistikos mokymas, mokymo personalas