View metadata, citation and similar papers at core.ac.uk
brought to you by CORE
provided by Ghent University Academic Bibliography

LEGAL AND FACTUAL SCOPE AND BOUNDARIES OF CRIME SCENE INVESTIGATION

Kamber, Krešimir
Radmilović, Želimir

ABSTRACT

Purpose:

As a matter of course, the goal of this paper is to provide a general theoretical introduction to the evidentiary criminalist action of crime scene investigation. The aim is to provide a legal elaboration of the functionalistic normative prerequisites for such action, presented through issues of judicial supervision and evidence reliability requirements, as well as to research the conflicts of administration of proceedings and effective on-site criminal investigation.

Design/Methodology/Approach:

The referenced model for the paper is the new Croatian Criminal Procedure Code. The paper tests the solutions of the new Criminal Procedure Code regarding the evidentiary action of crime scene investigation through the substantive principles of adversarial systems of investigation, operational and tactical learning of criminalistics and international principles of human and individual rights. The paper is based on theoretical and professional literature on the subject as well as on the comparative analysis and analysis of discussions and professional papers following the new Criminal Procedure Code.

Findings:

The criminal procedure law reform in the Republic of Croatia has introduced a number of adversarial institutes and mechanisms with a primary emphasis on the trial as the central part of a criminal case. The unique investigative opportunities during the criminal investigation make crime scene investigation an indispensable action in the process of fact finding in a criminal trial. That opens two major issues: (1) administration of findings and (2) supervision of the action. Administration of findings must be in compliance with the established methodological patterns. Comparative analysis reveals two major forms of patterns to the administration of findings which are presented in the paper as: general administration requirements and special provisions systems. The paper defines judicial supervision of crime scene investigation and identifies its two purposes: control of legality and guaranties of evidence reliability.

Research implications:

Based on the findings presented in the paper, two major issues still remain for academic discussion and research: (1) is judicial supervision of crime scene investigation necessary and, if it is, (2) how to reconcile the need for urgent operational and security actions with an effective judicial control.

Practical implications:

Having the points and principles to the administration of the proceedings identified, police and investigators, as operational bodies, are expected to conduct on-site investigations more precisely and with a higher evidentiary effect. Through a definition of the scope and boundaries of judicial control, state attorneys and judges will be able to understand and appreciate their procedural function during crime scene investigation.

Originality/Value:

The paper is the first theoretical elaboration of the provisions of the new Criminal Procedure Code of the Republic of Croatia on the subject of crime scene investigation from the perspective of administration of proceedings and judicial control. The Article should contribute to further academic research and serve as a useful commentary on the relevant legislative provisions for the final application by practitioners.

Keywords:

Crime scene investigation, administration of proceedings, judicial control, evidence reliability, control of legality.

1. INTRODUCTION

A comprehensive criminal procedure reform is drawing to an end in the Republic of Croatia. A most significant change involves a transformation of the mixed criminal procedure with a strong inquisitorial character into an accusatory one. In the predominantly inquisitorial system that is being replaced, the trial functions as one of the developmental stages in a process in which all the participants (the defence, the prosecution, the victim and the court) seek to resolve the criminal matter through their joint effort. In order to arrive at the „truth“, the trial is defined as the „main hearing“, suggesting the possibility that other hearings to try the matter may be held before the actual trial stage. Before the trial, the investigating judge - an unbiased body representing public interest and consequently the interest of all participants in the proceeding - carries out the investigative activities, including judicisl inspection. Where the judge is prevented from doing it, or where any delay may be risky, the law authorises the police to perform such activities. Police officers inspect the scene in order to find, preserve, clarify and secure the first, unique circumstances of the crime and data that may later be used by all the participants in criminal proceedings.

In contrast, in an accusatory procedure the trial is defined as the central stage at which the evidence gathered by the parties will be presented and tested. In the end, the court will evaluate the reliability and the value of the body of evidence and will use it as a basis for rendering its decision about the criminal offence and the offender's responsibility. Unlike the past procedure, this one is markedly party-dominated. Rather than pursuing a common goal, the participants stick to their separate roles: the prosecution seeks to prove the existance of a criminal offence and the offender's responsibility; the defence actively represents the interests of the defendant, and the court – besides supervising the pre-trial proceedings – adjudicates the case based on the evidence adduced by the parties. Obviously, the responsibility for pre-trial evidentiary activities falls primarily on the prosecution, which significantly alters the previous position of the criminal prosecutor. He or she becomes the key agent in pre-trial proceedings, i.e., *dominus litis* of the investigation. What used to be a court-dominated investigation is transformed into one dominated by the state attorney.

The reform introduces a number of novel institutes aimed at speeding up the process – most importantly, avoiding a review of pre-trial proceedings – by skipping some stages and by providing for the possibility to close the proceedings before the main stage. These include summary proceedings, the principle of expediency in prosecution, order of summary penalty and new institutes whereby proceedings may be closed before or outside the trial. Besides these general, strategic changes, there are many others which to a larger or smaller extent alter the position of all participants in a criminal proceeding and provide safeguards against

encroachments on human rights and freedoms. The position of the alleged offender (the suspect, the defendant, the accused) is also changed, and the victim of a crime and his or her position in criminal proceedings are for the first time accorded increased protection.

It is worth pointing out that, as part of the described changes, the position and the role of police before the start of a proceeding and at its pre-trial stage has also changed. Under the new legislation, the work of police is confined to crime and perpetrator detection, whereas the investigation of specific crimes is to be carried out exclusively under a warrant issued by the state attorney. Instead of the urgent investigative activities prescribed by past legislation, which police was authorised to perform *proprio motu,* the new Criminal Procedure Rules have now introduced into pre-trial proceedings evidentiary actions[1] that may be performed by the police or investigators acting under a warrant issued by the state attorney. One such procedure, which has major implications for the success of criminal proceedings, concerns judicial inspection.

Of special importance, it seems, is the conduct of judicial inspection before the start of a criminal proceeding. In this paper, we shall attempt to draw some conclusions by analysing the relevant legislation and the elements of judicial inspection as an evidentiary action, and by looking at the seemingly conflicting goals: investigating crimes and prosecuting their perpetrators on the one hand, and on the other hand safeguarding human rights that may, indeed, be endangered if evidentiary actions are conducted without judicial supervision.

2. CRIME SCENE INVESTIGATION AND JUDICIAL INSPECTION

Crime scene investigation (CSI) combines two complex sets of procedures with respect to the presumed or actual scene the criminal event occurred at. The first involves some police activities aimed at crime and perpetrator detection (informal police inquiries), and the second relates to a specifically defined evidentiary action – judicial inspection. In other words, CSI combines a set of procedures conducted according to the procedural rules of judicial inspection, as well as an informal procedure of gathering information about the existence of physical and eyewitness facts that may point to the existence of a criminal event or a safety-endangering one. In most criminal offences, the crime scene is the starting point for all criminal investigations, some of which may lead to a criminal proceeding. (Pavišić, 2006).

An important issue involves the securing of physical and testimonial facts obtained through informal police inquiries, especially when it comes to volatile and short-lived traces, or eyewitness evidence, and their usability in subsequent stages.

In the course of judicial crime scene inspection, the facts of the case are established or clarified by being perceived with a person's own senses or sensory aids. Judicial inspection is

[1] Urgent evidentiary actions.

performed where the establishment and clarification of the facts relevant for the proceedings requires direct observation by a procedural body (Pavišić, 2008). This evidentiary action may be performed before the start of the formal investigation, but also during investigation and following indictment. Pre-trial proceedings are dominated by the state attorney, but the actual investigative activities are carried out by the police or the investigator.[2]

2.1. Significance of crime scene investigation and judicial inspection

Crime scene constitutes a set of unique physical and psychological circumstances[3] which may be, and most commonly are, of paramount importance in setting the course of criminal investigation and ensuring a successful conduct of criminal proceedings. With the lapse of time, with or without outside impacts, those circumstances tend to change or disappear, which calls into question their suitability for use at a later stage (Adams, 2004). This fact gives urgency to all procedures at or related to the crime scene and defines them as undeferrable measures[4] (Clages, 1997), which is why they are referred to as first response measures (Leonhardt, 1995; Hawthorne, 1999).[5]

Crime scene characterists that are most susceptible to change include the so-called short-lived or volatile traces, phenomena and personal traces (Radmilović, 2008). As to short-lived physical traces, they are the ones whose structure or chemical composition changes with the lapse of time. Such traces may disapper in between the moment the event occurred and the moment the crime scene is investigated and measures are taken to secure the traces, or they may change to the extent that they become obliterated, impossible to secure, or unsuitable for use in the subsequent stages of the proceedings. Examples of such clues include smells, sounds, flame colour, volatile liquids, and specific weather conditions (Modly, 2001).[6]

[2] The state attorney is vested with the primary authority over criminal inquiries and fact finding activities at pre-trial stage. However, the statement suggests that some activities are expected to be performed primarily by the police or the investigator, which does not change the formal position of the state attorney.

[3] The notion of „unique investigative opportunity“ clearly points out the uniqueness and unrepeatableness of the set of traces and the overall situation at the crime scene.

[4] The terms „Sofortmassnahmen“ and „Unaufschiebbaren“ established in German literature on criminalists clearly suggest the pressing nature of the situation, i.e., the need for urgent action. British authors (Raymond E. Foster) speak of the „golden hour“, the rule that suggests that the first few hours of investigation are decisive in setting the course of further proceedings, i.e., that the „golden hour“ is the time following the event in which maximum use of the evidence found on the site can be made.

[5] First response (German: Erste Angriff) comprises all measures taken at or related to the crime scene, ranging from those aimed at achieving security goals (eliminating risk and neutralising harmful effects), measures designed to creating the pre-conditions for crime scene investigation (sealing off the site) to the actual crime scene investigation measures.

[6] Smell traces at a fire site, flame and smoke colour, flame pattern, liquid traces, potential accelerators and similar traces may be decisive in clarifying the circumstances and the cause of fire. With the passage of time such traces will either completely disappear or restrict the possibility of establishing the key facts.

When it comes to fact finding boundaries related to crime scene investigation, besides the limitations on establishing the physical circumstances at the scene or the physical properties of an inspected exhibit, there are also boundaries with respect to eyewitness sources (testimonial evidence). Eyewitness testimonials are the product of personal observation and psychological processing of an event on the part of the person who was in touch with the commission of the crime.

The length of the time that passed from the moment the event occurred to the moment such traces were secured is inversely proportional to the quantity and quality of the content retained and reproduced by the eyewitness (Goldwin, 2001). Scientific findings on psychological processes related to perception (especially in the case of perception under stress)[7], memory, forgetting and recall, point to the dubious relevance of eyewitness testimonies (Wolf, 2009, Gluščić et al., 2006).

Taking into account these circumstances that reinforce the need for urgency in taking first response measures, and acknowledging the fact that the judiciary was understaffed and underequipped, the makers of the past criminal procedure law entrusted the taking of urgent investigative measures to the police *proprio motu*, on condition that the procedural rules and rules of criminalistics were adhered to, seen that the police does ground patrols anyway and possesses the requisite staff and equipment.

The normative solutions of the „new" Criminal Procedure Act[8] do not envisage the possibility of the police or the investigator acting on their own initiative to interfere with the procedural activities, not even where a delay would clearly be risky. Putting the need for judicial supervision over procedures that fall within the area of human rights before the need to secure evidence to be used in criminal proceedings is a clear policy declaration. Human rights come first. On the other hand, one might raise the question of the basic human rights vested in the victims of crimes and their right to see the perpetrator that harmed them identified and duly sanctioned. The solutions contained in the Croatian Criminal Procedure Act might be interpreted as placing the two goals in opposition, because they seem to put the suspect's human rights before the human rights of the injured person and the public interest in criminal proceedings.

[7] In forensic psychology stress is known to lead to brain activity that results in a release of certain hormones that impact long-term memory in a way to block it.

[8] Criminal Procedure Act (Official Gazette No. 152/08, 76/09, hereinafter: the Criminal Procedure Act). In the moment when the abstract of this paper is submitted for the publication there are amendments to the Criminal Procedure Act pending. These amendments are bringing certain technical novelties to the formal action of judicial inspection but substantially in regard to the issues raised by the paper, that is the judicial supervision, situation remains the same.

2. 2. Crime scene investigation and other evidentiary actions

The Criminal Procedure Act puts all evidence taking activities on par. An interesting situation occurs where the findings of judicial inspection depend on „additional" evidentiary actions. In the course of judicial inspection, *inter alia*, physical traces are secured and collected. In order to gain the exact information a particular trace may yield, it is often necessary in the process of criminalist identification to obtain expert report and opinion from an expert in a relevant field. The authority to seek an expert review is vested in the body conducting the proceedings (the state attorney), rather than the body carrying out evidentiary actions (the police or the investigator). The expert reviewer must be provided suitable samples. For fingerprint identification these involve reference fingerprints and impressions of other parts of the body. For mollecular-genetic analysis, reference samples of biological material (hair, blood, bucal tissue) are needed. The Act does, indeed, authorise the body that prior to the start of the proceedings conducts searches, preliminary confiscation of property, judicial inspection or any other evidentiary action to order that samples of biological material be taken. However, reference samples may only be obtained with the state attorney's warrant. The same applies to a defendant's body search, which should be performed for the purpose of analysing and establishing other material facts of the case.

3. JUDICIAL SUPERVISION OVER EVIDENTIARY ACTIONS AT PRE-TRIAL STAGE: PROTECTION OF BASIC HUMAN RIGHTS AND EVIDENCE RELIABILITY

The primary[9] purpose of judicial supervision over evidentiary actions at pre-trial stage is to make sure they are carried out in compliance with the basic legislative requirements[10]. The basic legislative, i.e., formal requirements for performing evidentiary actions can be analysed from two key points of view: (1) protection of inviolability of individual rights guaranteed by the constitution and international law, seen that some procedures that in terms of their content qualify as evidence gathering, when implemented, do in fact to a larger or smaller extent interfere with those protected rights, and (2) a clearly defined legislative framework, objectives and

[9] Possibly the only purpose. Namely, evidentiary actions as activities of the prosecution bodies have two components: regulatory and operational. The regulatory component involves the formal requirements for proceeding with evidentiary actions, while the operational component covers the availability of suitable equipment and trained staff. While admitting that a strict differentiation is impossible, judiciary bodies could supervise the operational component only provided they have sufficient knowledge of (syllogistic) criminalistics.

[10] Specifically, supervision of their legality.

requirements regulated primarily under the provisions of the Criminal Procedure Act, which ultimately guarantee evidence reliability.

Judicial supervision over evidentiary actions may be classified as pre-event, post-event and concurrent control over the actions taken by the prosecuting body in the course of gathering evidence, the control being exercised by two bodies of the judiciary authorised by law to do so: the court and the state attorney. From the point of view of the new procedural law, this implies supervision over evidentiary actions taken by the state attorney and/or the police.

Pre-event supervision is involved where a technically equipped and operationally trained body is required to obtain, before embarking on an evidentiary action, a prior authorisation by another (judicial) body: the court or the state attorney.[11] Post-event supervision is involved where minutes, documents, technical recordings and other documents relating to procedures already taken[12] are ratified, while concurrent supervision implies that the judicial supervisor is actually present at the time and place the evidence is being gathered by – in this particular case – by the investigator and/or the police.[13]

Another possible classification makes a distinction between: (1) judicial supervision in a narrow sense and (2) judicial supervision in a broader sense. The judicial supervision described above corresponds to the broader sense definition, while judicial supervision in a narrower sense would involve only the supervision exercised by the court. At pre-trial stage, the role of the court is exercised by the judge of investigation. The judge of investigation is the guarantor of effective, fair and lawful pre-trial proceedings. Nevertheless, regardless of the state attorney's partisan role, this body's position as an autonomous and independent authority of the justice system, responsible for performing its duties in compliance with the Constitution, international law and legislation, may not be denied the role of judicial supervision.

The content of judicial supervision exercised by the state attorney[14] over pre-trial evidentiary action is restricted by law to the issue of evidence reliability. This is demonstrated by an analysis of statutory provisions regulating supervision of the protection of basic individual rights in evidence gathering, which entrust this role almost exclusively to the courts.[15] Obviously, this applies alongside the previously described general function and position of the state attorney's office. At the same time, judicial supervision vested in the courts includes both

[11] E.g., the search pursuant to Article 242 of the Criminal Procedure Act.
[12] Specifically, supervision of their legality.
[13] The Criminal Procedure Act envisages concurrent control as a matter of course. Namely, evidentiary actions are the responsibility of the state attorney, who may choose to carry them out personally or entrust them to an investigator.
[14] In terms of the indicated dichotomy: (1) individual rights protection, and (2) evidence reliability.
[15] Court's supervision (pre-event, post-event, or concurrent) is mandatory in: (1) special evidentiary actions (Article 215 and Articles 332 through 340 of the Criminal Procedure Act), (2) search, (3) temporary confiscation of items (Articles 264, 265, 266 of the Criminal Procedure Act), (4) preliminary and temporary security measures (Article 271 of the Criminal Procedure Act), (5) witness interrogation (Article 292, 295 para. 9), (6) exhumation (Article 319 para. 3 of the Criminal Procedure Act).

ensuring protection of basic rights and evidence reliability.[16] This approach on the part of the lawmaker is consistent with the state attorney's role as a party to the proceeding responsible for gathering evidence for the prosecution. Expediency-driven partisan interests demand that evidence be credible. In addition, the presumption that the prosecution bodies, specifically the investigator and/or the police, are acting in good faith (*bona fide* presumption*)* applies, although their operation still remains under the state attorney's supervision.

3. 1. Protection of basic human rights in crime scene investigation

Seen from the point of view of protection of individual rights in the course of crime scene investigation, the situation becomes complex in that the topography and the location of the crime scene may place the range of the need for judicial supervision at extreme ends: supervision is either absolutely necessary (home search) or completely unnecessary (investigating traces of a possible crime on a road or some other public space).

At its different developmental stages, crime scene investigation may primarily involve interference with an individual's freedom of movement and right to privacy.

Temporary deprivation of liberty as an authority vested in the police under Articles 51 through 52 of the Act on Police Work and Authority[17] may be exercised in the form of: (1) temporary restriction on access to a specific area or facility, (2) temporary restriction on movement within a specific area or facility, and (3) detention of person. This police authority may be exercised for the purpose of detecting traces and items that constitute potential evidence should the case proceed to trial, and the police is likely to exercise it in the course of securing and inspecting the crime scene. The Criminal Procedure Act also empowers the body carrying out judicial inspection, i.e., the state attorney or the investigator, to restrict access to and stay in an area, or access to objects that may contain facts which need to be inspected. In principle, these measures do not qualify as deprivation of liberty measures under Article 5 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the Convention), although one may conceive of a situation where such measures, taken as a whole, given the extent and intensity of restriction, could be construed as deprivation of liberty (Guzzardi v Italy[18]). Given their nature, they actually qualify as forms of restriction on freedom of movement under Article 2 of Protocol No. 4 to the Convention so that in their application account should be taken

[16] Judge of investigation shall conduct evidentiary hearing to ensure evidence reliability if a witness is exposed to an influence that may undermine evidence reliability and if other evidence cannot be adduced later (Article 236 para. 1 subpara. 3 and 4 of the Criminal Procedure Act).
[17] Act on Police Work an Authority (Official Gazette, No. 76/09).
[18] Guzzardi v Italy, Application No. 7367/76, 06.11.1980.

of the justification of resorting to such responses, i.e., whether in a given situation such responses are necessary according to the general standards of a democratic society (Raimondo v Italy[19]).

Judicial inspection as an evidentiary action, i.e., crime scene investigation, carries a potential of interference with or restriction on the right to privacy if it is carried out with respect to privacy protected objects under Article 8 of the Convention. Specifically, this applies primarily to home and other areas used by an individual, although it also includes items in an individual's possession as well as all other goods that fall within the sphere of his or her private life. Home comprises any area a person actually stays at (Buckley v the United Kingdom[20]), including business premises (Niemietz v Germany[21]). The general rule applies here under which restriction on the right to privacy is justified if interference is necessary, i.e., if there is a particular social request that such procedures be taken (Dudgeon v the United Kingdom[22]). The Criminal Procedure Act (Article 246 para. 1) provides for the possibility of judicial inspection being performed in/on all facilities that qualify as privacy areas except home and some specific areas designated by a special law. The authority to inspect them is vested in the state attorney, the investigator or the police but only if the scene is one where a crime has been committed. Otherwise, or where home is involved, a search warrant needs to be obtained.

3. 2. Ensuring evidence reliability

Reliability of evidence gathered in the process of crime scene investigation is ensured by way of administering procedures in regard to findings of the inspection. A comparative analysis of procedural laws shows that there are two basic forms of administration: (1) general rules of administration (2) special systems.

„General rules of administration“ refers to those systems whose criminal procedure legislation does not contain any special provisions regulating the conduct of crime scene investigation. It remains a police-run crime investigation action whose findings, documents and other records are used as evidence in criminal proceedings in accordance with the general rules on admission of evidence. This is a typical feature of accusatory systems in the first place, accounted for by the fact that in an accusatory proceeding the trial constitutes its main stage at which all evidence will be adversarially tested, including the findings of the crime scene investigation.[23]

„Special systems of administration“ refers to those systems whose legislation regulates the conduct of crime scene investigation as an evidentiary action geared towards establishing the

[19] Raimondo v Italy, Application No.12954/87, 22.02.1994.
[20] Buckley v the United Kingdom, Application No. 20348/92, 25.09.1996.
[21] Niemietz v Germany, Application No. 13710/08, 16.12.1992.
[22] Dudgeon v the United Kingdom, Application No. 7525/76, 24.02.1983.
[23] See Article 901.(b)(7) and Articles 1001 through 1006, U.S. Federal Rules of Evidence (1 Dec 2010).

facts of the case. Crime scene investigation findings are assessed primarily against the statutory rules for conducting crime scene investigation, and then against the general rules of documentary evidence which is the product of crime scene investigation, recordings or any other medium bearing information relevant for criminal proceedings. Special systems of administration are a feature of continental procedural tradition which persists in spite of the reforms that have introduced into continental systems a number of accusatory system institutes.[24]

The application of a particular administration system depends on the structure of criminal proceedings and pre-trial investigation, as well as on the formal evidentiary requirements set by continental legislation. The formal requirements may be the result of the need for judicial supervision over legality and evidence reliability, although in terms of implementation and in operative terms they leave a number of open questions. Besides, if the reform of continental systems is designed to bring about a transition to an accusatory system where an adversarial trial functions as the decisive stage in a criminal case, then the application of this system seems unnecessary.

4. CONCLUSION

When structural changes are made whereby a predominantly inquisitorial system of criminal justice is transformed into one modelled on accusatory procedure, individual institutes must be interpreted within the framework of the system's basic tenets. In the process, in terms of regulatory and scholarly debate, the construction of individual solutions must start precisely from the fundamental tenets of the „new“ accusatory model.

Consequently, the statutory regulation of judicial inspection should be viewed against the goal it aims to achieve in proving a criminal offence, i.e., against the role it plays in achieving the goals of criminal proceedings. In accusatory system of criminal procedure the trial is the central stage of the proceeding. Everything the parties have discovered and established though investigation becomes evidence provided it has passed adversarial confrontation and testing in the course of the trial. That is precisely where the key distinction between the inquisitorial and accusatory systems lies.

In theoretical terms, relationships could be described as follows: the court, which functions as an arbitrator at trial and a guarantor of basic human rights throughout the proceedings, has no interest in judicial inspection or any other evidentiary action as long as individual rights are not interfered with in the process. In principle, the defence is also not

[24] See Articles 244 through 246, Codice di procedura penale (br 447, 448, 449; Gazzetta ufficiale della Repubblica Italiana, n 250 od 24.08.1988); Articles 304 through 306, Criminal Procedure Code; Articles 245 through 248, Criminal Procedure Code of the Republic of Slovenia (Ur.l.RS); Articles 106 through 108, Criminal Procedure Code of the Federation of Bosnia-Herzegovina (Službene novine F BiH br 35/03, 37/03, 56/03); Article 86, Strafprozeßordnung (effective 07.04.1987, with amendments).

interested in judicial inspection because of the presumption of the defendant's innocence. At investigation stage, the suspect is not interested in the fact that something is being investigated which has nothing to do with him. If the investigation, i.e., the judicial inspection, was irregular, the defendant will challenge it in presenting his case at trial; actually, he will only need to raise a reasonable doubt about the findings or the version they support. If he insists, the suspect or the defendant may ask the state attorney to order a judicial inspection, although there are no obstacles to him taking on his own some actions that virtually constitute inspection; these findings will in turn be subjected to examination and contestation by the prosecution.[25]

By analysing regulatory solutions concerning the conduct of evidentiary actions, primarily those that may be referred to as urgent, an attempt was made to answer the question of the real goal and the purposefulness of „judicial" supervision of certain evidentiary actions by the state attorney, without questioning the clearly defined legislative position on of that issue. Namely, procedural legislation clearly makes it impossible for the police or the criminal investigator to take any autonomous and independent evidentiary actions, providing for such actions to be taken only by a body of the proceedings, specifically the state attorney.

According to the described model of judicial supervision, it is clear that the supervision exercised by the state attorney is retained only as a guarantee of evidentiary reliability of the performed action. Starting from the assumption that the findings of judicial inspection will be tested in an adversarial trial, the state attorney's supervision does not seem to give any special significance to its reliability; in other words, as a party-controlled action, it should have the same value before the court. It follows that supervision of judicial inspection by the state attorney is envisaged by the lawmaker as a means for ensuring procedural correctness and evidentiary quality, or rather quantity, of the obtained findings.

Finally, one might reasonably conclude that the intention, i.e., the aim of the described legislative solution, is not completely clear seen that in terms of implementation and in operative terms it opens a whole range of dilemmas that may act as a barrier to a timely and regular conduct

[25] The defence, including all rights related to substantive and procedural defence, exist throughout the proceedings as well as before its commencement. See Article 65 para.1 of the Criminal Procedure Act and European Court of Human Rights in Imbrioscia v Switzerland, Application No.13972/88, 24.11.1993.
Notes of investigation conducted by the defence are entered in the trial file (Article 366 para. 2 subpara. 10 of the Criminal Procedure Act) which could definitely include notes of the crime scene investigation. This is yet another argument in favour of the view that judicial inspection should be regulated as an exclusively party-controlled action. The police would conduct it for the prosecution, and for the defence it would be conducted by the defence counsel or, in certain conditions, the state attorney or the court. Procedural legislation should only regulate the rules for admissibility of procedural findings. In a narrow sense, this means administration as has been shown by comparative analysis where there are provisions regulating only which writs and processes may be admitted in criminal proceedings as evidence, and in a broader sense, apart from administration, this also means legality, which presupposes that it has been clearly regulated by procedural legislation at which point a judicial inspection has evolved into a search, a probe or an expert review, in which case further requirements should have been met such as a warrant or the presence of a judicial body.

of judicial inspection and evidence taking; a barrier that in urgent and undeferrable actions in particular should not exist in the first place, or should be easy to overcome.

REFERENCES

1. Adams F. Th., Caddell G. A., Krutsinger L. J. (2004). Crime scene investigation, New Jersey, Prentice Hall.
2. Clages, H. (1997). Kriminalistik: Lehrbuch fur Ausbildung und Praxis; Methodik der Fallbearbeitnug, der Tatort, der Erste Angriff, Stuttgart, Boorberg.
3. Hawthorne, R. M. (1999). First unit responder: A guide to physical evidence collection for patrol officers, USA, Boca Raton.
4. Gluščić, S., Klemenčić, G., Ljubin, T., Novosel, D., Tripalo, D., Vermeulen, G. (2006). Zaštita svjedoka kod teških kaznenih djela, Priručnik za obuku policije, državnih odvjetnika i sudaca, Strasbourg, , Council of Europe Publishing.
5. Goldwin, M.(2001). Criminal Psychology and Forensic Technology, a Collaborative Approach to Effective Profiling, New York, CRC Press.
6. Modly, D. (2001) Osiguranje mjesta kaznenog događaja, Zagreb, Ministarstvo unutarnjih poslova RH.
7. Pavišić, B., Modly, D., Veić, P. (2006). Kriminalistika 1, Zagreb, Golden marketing-Tehnička knjiga.
8. Pavišić, B. (2008). Novi hrvatski Zakon o kaznenom postupku, Hrvatski ljetopis za kazneno pravo i praksu, vol. 15, br. 2/2008, 489-602.
9. Radmilović, Ž. (2008). Rad na mjestu događaja - Krimarak 12, Zagreb, Ministarstvo unutarnjih poslova RH.
10. Leonhardt, R., Roll, H. & Schurich, F. R. (1995). Kriminalistische Tatortarbeit: Ein Leitfaden fur Studium und Praxis, Heidelberg, Kriminalistik Verlag.
11. Wolf, T., Oliver (2009). Stress and memory in humans: twelve years of progress?, Brain research, Bochum, Department of Cognitive Psychology, Ruhr University Bochum.