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THE ROLE OF CRIME SCENE INVESTIGATION IN HUNGARIAN CRIMINAL PROCEEDINGS

THESES OF DISSERTATION

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I. The research aim and the brief summary of the research task laid down

As topic of my research, I have chosen the role of crime scene investigation in criminal proceedings, since I have been engaged with this legal institution for fifteen years as practitioner expert and for six years as national professional leader.

Another rational for the choice of topic has been that emphasizing the outstanding importance of crime scene investigation in the course of criminal proceedings is deemed trite nowadays, yet, I experience codification deficiency and, regarding certain matters, rules that are far from the everyday practise, therefore applicable with difficulty. With attempting to prove some of my theses from theoretical side and to formulate *de lege ferenda* proposals, I trust that the field of criminal technic gets somewhat closer to its own, deserved prestige and the adequate legislative environment thereof.

In my dissertation, I endeavoured to provide bases of proof theory for the crime scene investigation conducted in the stage of pre-trial investigation, on which the codification, the recommendations of criminalistics and the best practice of everyday may hopefully be built subsequently in a reassuring manner.

The aim of my dissertation is to compose, classify and deduce the criteria of the ‘good crime scene investigation’. At formulating this expression, the parallelism with the ideology of ‘good state’ also came to my mind inevitably, since the aim of good state is to achieve common good which includes seeking balance between different interests, and to this effect, it allows the enforcement of claims and provides protection in case of need.¹ In the course of the crime scene investigation, these tasks can be executed in a reassuring manner with observing the procedural guarantees.

Regarding the constitutional criminal policy, András Szabó said: *‘the constitution has no provisions which should be implemented by the criminal policy, thus the criminal policy is*

¹ Magyary Zoltán Közigazgatási-fejlesztési program. 5. [Magyary Zoltán Public Administration Development Programme 5] <http://magyaryprogram.kormany.hu/admin/download/8/34/40000/Magyary-Kozigazgatas-fejlesztési-Program.pdf> (Date of download: 22 March 2016) cf. also KISS, NORBERT: A Jó Állam koncepcióértékelési, -mérési dilemmái és kísérletek egy indikátorrendszerre. [Concept evaluation and measurement dilemmas of the good state and attempts for an indicator system] http://vtki.uni-nke.hu/uploads/media_items/A_Jo_Allam_koncepcio_TNRH.original.pdf (Date of download: 22 March 2016)

conforming to the constitution if it is not unconstitutional'.² I considered this regarding crime scene investigation. Is crime scene investigation 'good' only because it does not violate legal and professional norms, or does it have to meet further requirements? I have sought to answer also this question in my dissertation.

I have not dealt with scenes of accident, since they merely constitute an entirely different, special segment of the institution of crime scene investigation, while also being processed in the frame of criminal proceedings. The study on such scenes should be the topic of a separate research.

My dissertation deals with crime scene investigations conducted in the course of *investigations in criminal proceedings* and only tangentially with other fields of law and with judicial crime scene investigation. The reason for this is that the rules of crime scene investigation applied in the course of investigations in criminal proceedings are the ones appearing, in a more simple form, in the regulations of other branches of law, and they predominate regarding their number and importance as well.

The concept and the elements of 'good crime scene investigation' appear throughout the entire dissertation. I have mentioned this concept or referred to it repeatedly, as I attempted principally to denominate and to reason the main characteristics of 'good crime scene investigation' briefly at the end of the dissertation. I have formulated my thoughts for this aim, and both the structure and the message of my dissertation have been developed in this spirit.

I intend to propose constructing a criminal technical system being able to serve the requirements of investigating bodies and to guarantee the preconditions necessary for grounded expert opinions, so that it does not lose any of its efficiency meanwhile.³ A further task is to ensure that the physical means of proof sought in these frames stay reliable later in evidentiary procedure, therefore they serve as stable basis of judicial decisions.

² SZABÓ, ANDRÁS: Büntetőpolitika és alkotmányosság. [Criminal policy and constitutionality], Jogtudományi Közlöny, 1995:9, 418.

³ cf. TIHANYI, MIKLÓS–VÁRI, VINCE: Jó állam-jó rendészet, avagy a rendőrség hatékonyságmérésének koncepciója. [Good State-good law enforcement, or the concept of efficiency measurement of the police], Magyar Rendészet, 2015:4, 123.

II. Applied research methods and the structure of the dissertation

In the course of preparing the dissertation, I have used research methods characterising the jurisprudential researches. Such methods characterise all phases of the preparing of my dissertation from gathering materials to formulating the conclusion. The primary methods were **analytical description**, evaluation of the laws and other legal sources, delineation of the practice of domestic appliers of law and drawing the conclusions.

The delineation of the **Hungarian regulations** was primarily based on the Criminal Proceedings Act, on the decrees on this subject, on the internal norms and, occasionally, on the pertaining decisions of the Constitutional Court of Hungary.

Regarding the **scholarly literature**, my aim was to use the primary sources but in some cases, especially at citing e.g. the words said at round table discussions and conferences, it was not possible. It appertains to the subject that I have had to use also internal sources (reports) of the police, after obtaining the required permissions, as they contained data necessary for me. The dissertation endeavours to process entirely the existing sources of scholarly literature relevant to the research topic. I have studied all domestic **magazines** that have been or were published in the field of law and criminalistics since the 1950s. I have read and have processed hundreds of articles; about hundred of them contained pieces of information that are important for my research topic. With respect to the research topic, it is observable that the years of the 1970s and 1980s were really productive regarding the publishing of **professional monographs**; fewer serious works were created in the twenty years since then.

In the **foreign scholarly literature**, I have primarily searched the praxis, i.e. articles and books (of the latter, the ones available in Hungary) which provide insight into the foreign practise and cases, and from which I have sought support for my conceptions, having endeavoured to estimate the direction the more developed countries are moving to.

I am in a fortunate position because my research topic is my job as well, so I have been **abroad** several times and have **professional connections** mainly in German language areas.

The **normative method** runs through the entire dissertation, I analyse the legal background regarding all topics, and where I have proposals for regulations, I delineate them in the text supported with reasons and at the ends of chapters under the title ‘summary’.

Following the introductory chapter, the dissertation **comprises of three chapters**, each of which has two sub-chapters, thus the whole dissertation includes **six sub-chapters and titles**. The three chapters exhibit the sets of criteria of the ‘good crime scene investigation’ (*observing the rules, extent of the crime scene investigation, verifiability*). Within the chapters, the sub-chapters show the characteristics (*legality, professionalism, completeness, elaborateness, factuality and reconstructability*) and the titles, according to my intention, show the train of thought along which I have formed the characteristics and the sets of criteria.

The research has been conducted with more intensive nature since 2009. Since then, I have taken part in several **scientific conferences** in Hungary and abroad, have written several **publications**, mainly articles on criminalistics and legal subjects related to the topic. **Teaching**, preparing for the lectures has promoted updating my knowledge constantly. The professional conferences and the extraordinarily valued consultations with **my supervisor** and with my colleagues at the department of the university have served the testing of my conceptions in scientific atmosphere.

III. Summarizing the scientific results

INTRODUCTORY CHAPTER

At the commencement of my dissertation, I have elaborated the history of crime scene investigation, concluding that, in Hungary, the pace of development of such evidentiary procedure has been below the level which the development of natural sciences would have allowed. For centuries, it has been used as an act pertaining to the observation of evidence provided by litigating parties, instead of being used as a valuable evidentiary procedure. Unfortunately, crime scene investigation has not been able to completely overcome such role until this very day in Hungary.

I have examined the object, aim and concept of crime scene investigation. I have ascertained that a person or an object may serve as the object of crime scene investigation, but a scene may not, and I have pointed out that the contrast between Paragraphs (1) and (4) of Section 119 in the Criminal Proceedings Act supports such statement as well.⁴ The aim of crime scene investigation is to ascertain whether the given action is an offence, to obtain data on committing such action, on the relevant persons, on the method of committing the action, and to connect the relevant persons to objects and further persons with the tools of criminal technic. The task of crime scene investigation also includes verifying data originating from other sources. I have revised the concept, both in narrower and in broader sense, of activity of crime scene investigation which I have developed years ago, adding primarily refining corrections to it. I have developed, also as a recommendation to the legislator, the following concept of crime scene investigation: *'crime scene investigation shall be ordered and conducted by the court, the prosecutor or the investigating authority if the detection, ascertainment of the fact to be proven requires the survey of a person, an object, or the recording of alterations uncovered in connection with those'*. I have examined the connection of crime scene investigation to other evidentiary procedures and coercive measures, concluding that the regulation on crime scene investigation falls short of the regulation on search regarding both elaborateness and lifelikeness. In favour of dissolving such difference, I

⁴ The Hungarian law of criminal proceedings uses the term crime scene investigation in two senses. The first sense is when it is conducted at the scene, the second is when it is conducted in front of the authority. While the English term crime scene investigation is completely equivalent with the the first sense, the second sense bears the meaning 'the examination of objects and persons in front of the authority'.

have formulated proposals to the legislator which promote the enforceability of crime scene investigation, and convert into law the obligation of preparing precise documentation.

In my dissertation, I have been seeking the requirements of ‘good crime scene investigation’. My main objective has been to denominate and to reason the characteristics of ‘good crime scene investigation’ briefly at the end of the dissertation. Is crime scene investigation ‘good’ only because it does not violate legal and professional norms, or does it have to meet further requirements? I have sought to answer also this question in my dissertation.

CHAPTER ONE: OBSERVING THE RULES

The crime scene investigation activity must be conducted in accordance with legal norms and professional rules. Observing those is indispensable in order that ‘good crime scene investigation’ is executed by the member of the investigating authority.

In the course of examining *legality*, I have provided an overview of the legal regulation on crime scene investigation, and concluded that it should be modified on several points. Not only the court and the prosecutor, but also the investigating authority should be entitled to order crime scene investigation, due to the necessity thereof in practice. I have upheld my two earlier legislative proposals, made in favour of regulating the obligation to duly document the place of uncovering the objects of crime scene investigation and the enforceability of the crime scene investigation in the Criminal Proceedings Act, and supported those with further arguments. In the course of examining the requirement of *professionalism*, I have concluded that the relation thereof to legality is close, yet the two concepts are not equivalent. There is a small segment in the set of legality which is not professional (maybe due to legislative error), and there is also a small segment in the set of professionalism which constitutes legal, yet unprofessional activity (appearing as an error in execution). Relating to ordering the crime scene investigation, I have remarked that it is merely ostensibly a legal issue; in effect it is preceded by a decision to be founded by a professional base (a base of criminalistics). I have asked the question, how to define in which cases and under which conditions should the object of the crime scene investigation be examined at the scene. A rule to cover all specific cases cannot be generated. Yet, I have formulated positive and negative conditions which may provide support in deciding whether to carry out the crime scene investigation at the scene. In the course of the crime scene investigation, uncovering physical means of proof is conducted along a train of thought developed by criminalistics, called mental reconstruction. The

scholarly literature covering that is vast, yet very few did formulate the necessity of being careful when applying it, for it may even lead the member of the investigating authority astray. I have elaborated three phenomena constituting the barriers of mental reconstruction, to which I have suggested solutions as well. I have ascertained that the uncovered physical means of proof must be analyzed and evaluated continually in the course of the crime scene investigation (partial evaluation), and also at the end of the crime scene investigation (overall evaluation). I have asked the question, to how many of the seven basic questions of criminalistics can ‘good crime scene investigation activity’ provide an answer. I have considered dealing with such issue important, for many theorist and practitioner experts overvalue the possible outcome of the crime scene investigation, or, on the contrary, underestimate it. I have construed the possible consequences of a crime scene investigation conducted unprofessionally, which, in my opinion, may be personal and evidentiary. Personal consequences may be issues of labour law in particular (e.g. disciplinary proceedings), while evidentiary consequence may be one of the following: 1. at scene activity low in traces due to poorly chosen methods of uncovering them; 2. uncovering and recording a large number of traces incompetent for identification; 3. crime scene investigation activity incompetent for drawing consequences posteriorly or at the scene. In such cases, ordering the conduct of a so-called supplementary crime scene investigation is required, the outcome and evidential force of which is doubtful.

CAPTER TWO: THE EXTENT OF THE CRIME SCENE INVESTIGATION

Under **the extent of the examination**, the characteristics of completeness and elaborateness are reasonable to expand.

The question evermore intriguing experts is ‘to what length and depth’ should the crime scene investigation be extended at examining the object of crime scene investigation. The answer to the first question is denoted by the completeness of the crime scene investigation, i.e., in a horizontal sense, which objects and persons should be inspected in the course of the evidentiary procedure. The second question is pertaining to the vertical examination, i.e. once the decision on the objects to be examined have been made by the member of the investigating authority, the question of the depth of such examination arises as well. In my dissertation, the exploration of *completeness* is commenced by defining the concept of proof, since, in my opinion, the awareness thereof is inevitable for the member of the investigating authority to realize what and to what extent must be proven in the course of the crime scene

investigation. I have accepted the concept of proof formulated by Flórián Tremmel, which, in the dissertation, is followed by delineating his comparative analysis on the proof of criminalistics formulated by Géza Finszter, and by adding the following ascertainments: 1. it is applicable only in the set of procedural proof, since it can only provide its recommendations within a frame in accordance with the norms. 2. It is aimed to serve procedural proof. 3. With the results of proof of criminalistics, it must underpin the proof of criminal procedure. 4. In order to prepare the administration of justice by applying the results of natural sciences, in the frame provided by law, its task is to identify the facts to be proven, by employing the means of proof. The latter is embodied in the course of crime scene investigation. 5. The extent of proof of criminalistics is determined by the extent of procedural proof. Therefore, all that the investigative authority wishes to involve in the scope of proof, needs to be made object of proof of criminalistics as well. In the course of crime scene investigation, deciding on the object of proof is a priority, since the place, time, and manner of crime scene investigation, as well as the persons conducting it and the tools required for its conduct must be determined based on such decision. Thus, at commencing the crime scene investigation, the consideration of what and when needs to be made object of proof requires thoroughness and proper time. That not being an easy task in the first few hours of the procedure, professional practice and protocol play major role at fulfilling it. The expedient way of accomplishing that is setting up several scenarios on the possible ways the offence had been committed. The frame of proof (also called the extent of proof) is not equivalent to the object of proof, yet depending on it. The frame of proof means, on the one hand, the scope and depth in which the facts belonging to the object of proof must and can be clarified, on the other hand, the evidence that must be uncovered and evaluated, and also the source of such evidence. In the course of crime scene investigation activity, the frame of proof helps all the required evidence to be obtained and the activity not to be burdened by insignificant, irrelevant data in between. If the object of proof changes, the frame of proof usually changes as well. In the course of proof, the crucial role played by crime scene investigation is merely ostensible compared to detection, since there is no successful proof without successful detection. The physical means of proof uncovered in the course of crime scene investigation may in themselves, with their colour, with the way they are situated, with their characteristics, with being present or absent on the contrary, advance detection and thus the uncovering of further physical means of proof. Therefore, it can be ascertained that physical means of proof may advance proof merely with being uncovered, even without being

identified in a criminal technical sense, thus crime scene investigation plays a significant role not only in proof, but in detection as well.

The issue of the *elaborateness* of crime scene investigation is significant for indicating, considering the object and the frame of proof which have then been determined, how thoroughly each piece of physical evidence needs to be handled. In the scope of that arise the circumstantial evidence, not being directly related to the facts to be proven, yet being significant regarding the proof, for being able to make the member of authority achieve the goal thereof in one or more steps. In the course of my examination, I have formulated standpoints to be taken into account in the course of crime scene investigation. The proper determination of the object and frame of proof by the investigative authority in the course of crime scene investigation may significantly advance detection, thus the crime scene investigation will be of suitable completeness, and, if considering circumstantial evidence too, the implementation of the evidentiary procedure will be of suitable depth as well, thus ‘good crime scene investigation’ becomes achievable.

CHAPTER THREE: VERIFIABLILTY

The requirement of **verifiability** is fulfilled if the crime scene investigation has been factual and reconstructable.

The objective of ‘good crime scene investigation’ is the most accurate determination of relevant facts based on the results of the crime scene investigation, or the better underpinning of facts, the determination of which has been based on other sources, with further evidence. The planning and conduct of the crime scene investigation must be based on the facts relevant in the terms of criminal law. Given that awareness of the place of uncovering physical means of proof and the traceability of such place, thus *factual* crime scene investigation activity is an essential requirement for the purpose of proof, I have, in another respect, reformulated the demand for supplementing the regulations on crime scene investigation regarding the requirement of documenting the place of uncovering physical means of proof in the Criminal Proceedings Act. Regarding factuality, the question of new criminal technical methods and the conditions of their application in the course of crime scene investigation, as well as whether they possess evidential force occurred to me. Regarding that, in my opinion, a modern tool may be competent for proof if the member of the authority conducting the crime

scene investigation is able to use it in a way that allows the object of the crime scene investigation to become recordable in a state suitable for expert examination, furthermore, its process is reproducible, and it fits the system of quality assurance. In the sub-chapter titled *reconstructability*, I have examined the concept of evidence as a central issue of proof, and the types of it thereafter. I have ascertained in the course of the examination of the types of evidence that none of such types have any general characteristic due to which it would be situated above other types in whole. Proclaiming the primacy of physical evidence is an ungrounded position, since there is a close, inseparable link between physical and personal evidence. In the course of proof, they must be interpreted jointly in every case. I have examined the role of the participants in the requirement of verifiability, and have ascertained, regarding the official witness, that the application of this legal institution pertaining to the whole of the investigative action, is, in general, incompetent for achieving the objective specified by the legislator. An opportunity is provided for recording video material instead, which could supersede the living person. Nevertheless, sustaining the legal institution of official witness is still reasonable. Since cases might occur where the opportunity of recording video material is not provided or, based on the discretion of the member of the investigative authority, applying an official witness is yet expedient for any other reason. Thus, accepting the legislator's will and partially agreeing with the viewpoint and dissenting opinion of the Constitutional Court, in my opinion based on my practical experiences and the result of my researches, sustaining such legal institution is still required, with adding a minor correction. Yet, beside spreading the application of video technology more widely, it is reasonable to declare in law that an official witness may be applied based on the motion of a participant to the procedure or of the authority, noting that such application may also be limited to relevant instances of the evidentiary procedure, the fact and circumstances of which must be credibly documented in the minutes taken thereof. However, if, at the commencement of the investigative action, the person concerned by the procedure makes a motion for the application of an official witness, the authority has no discretion, thus the official witness may not be applied merely at one or more stages of the investigative action. Therefore, it is reasonable to expressis verbis specify the application of the official witness at the relevant instance(s) of the investigative actions as an option in the Criminal Proceedings Act. The precise description of by whom, where and what measure has been taken, and, with proper reasoning, how it has been taken in the course of the investigative action, must be factually and reconstructably specified in the minutes recording the results of the crime scene investigation. Reconstructability is served by the static part of the minutes which includes the

description of the scene and its wider environment, and also by the dynamic part which delineates the process and result (or the lack of result) of recording traces and material residues. For that very reason, I recommend to regulate the requirement of reconstructable recording in the Criminal Proceedings Act. At examining the issue of taking photos, I have ascertained that the current regulation is obsolete and ambiguous as well, since, reading the provisions of Section 119 and 123 concomitantly shows that photos must be taken in the course of crime scene investigation ‘as a rule, where possible and necessary’. Therefore, I recommend the omission of the expression ‘necessary’ in Paragraph (3) of Section 119 in the Criminal Proceedings Act, and also the omission of the expression ‘as a rule’ in the common provisions of Section 123 in the Criminal Proceedings Act, thus leaving the expression ‘where possible’ regarding the obligation of taking photos in the course of the crime scene investigation. In my opinion, this fulfils the requirements of the procedural act, providing a regulation interpretable in practice as well. I also recommend that, under specific conditions, the video material recorded of the whole crime scene investigation activity should provide an exemption from filling out certain parts of the minutes, as can be seen in the case of other means of proof (Section 167 of the Criminal Proceedings Act). Therefore, an option must be provided, especially in the case of crime scene investigations of simple conduct, for it to be recorded by the authority merely by ‘simultaneously recording video and audio material’. As to my proposal, in the future the recording of the results of crime scene investigation might take steps toward a state where minutes would only include currently effective formal (legal) requirements of the crime scene investigation, while material (professional) requirements would transform, divided into more and also more transparent stages, as shown in my proposal. The currently used static (scene descriptive) part of the minutes would be simplified, and replaced, made more detailed and also more factual by more photos and, along with that, by a new method of preparation. Yet, in order to achieve all that, a strict, unambiguous, verifiably protocol of taking minutes and photos is required, which would be disclosable to all persons taking part in the procedure. Naturally, this must be complemented by an idea of the manners of securing the taken photos credibly, regarding which I have proposed three ways of solution in my dissertation. A verifiable frame would be provided for these ideas by the development of a system guaranteeing, as an outside source, that such process is conducted pursuant to the provisions, which system is accreditation, the quality assurance of crime scene investigation activity. Regarding that, in my opinion, firstly the unification of crime scene investigation activity must be implemented until 2020, based on the quality assurance of forensic expert areas developed in the meantime. Providing an overview

of handling the items gathered at scene, I have ascertained that *one* document of handling would be reasonable to introduce, which guarantees, in a simple, verifiable manner, the precise traceability of the place of origin of the confiscated object, of its way to court, and even to its handover or destruction, thus making the verification of ‘Chain of Custody’ fast and simple.

Thus ‘good crime scene investigation’ is legal, professional, characterised by elaborateness and completeness, factual and reconstructable.

At the end of each sub-chapter of my dissertation, I have summarized my theses in detail for the sake of clarity and unambiguity, and also my de lege ferenda proposals resulting from them.

In the following, I provide the consolidated version of all my proposals on norm amendment pertaining to the regulation of crime scene investigation.

DE LEGE FERENDA PROPOSALS

(summary)

I. Proposals on amending the Criminal Proceedings Act

As a result of my dissertation, summarizing de lege ferenda proposals, my recommendations on amending the provisions on crime scene investigation of the Criminal Proceedings Act are the following:

Crime scene investigation

(1) Crime scene investigation shall be ordered and conducted by the court, the prosecutor or the investigating authority if the detection, ascertainment of the fact to be proven requires the survey of a person, an object, or the recording of alterations uncovered in connection with those.

(2) On the occasion of the crime scene investigation, the circumstances significant regarding proof shall be recorded in detail. At the crime scene investigation, the physical means of proof shall be uncovered and gathered, and their proper safe-keeping shall be ensured. If possible, audio, video or audiovisual material, drawing or draft shall be prepared of the object of crime scene investigation, which shall be attached to the minutes.

(3) Prior to uncovering and recording the traces, material residues, the state of the scene shall be documented in detail, in a subsequently reconstructable manner.

(4) If examining the object of crime scene investigation at the scene is not expedient, the crime scene investigation shall be conducted in front of the authority which ordered it.

(5) The defendant, the witness, the victim and other person, particularly the person disposing of or possessing the object of crime scene investigation, shall submit to the crime scene investigation, shall make the object in his/her possession available for the purpose of crime scene investigation. In the case of the defendant, such obligation is enforceable, in the case of the victim, witness and other person, the obligation is enforceable and a disciplinary penalty is impossible.

(6) The process of crime scene investigation may be documented also by simultaneously recording video and audio material. In such case, the minutes shall indicate only the ones present, the place and time, and other circumstances of taking the minutes.

There are further regulations on crime scene investigation in Section 123 of the Criminal Proceeding Act on presentation for identification, which are pertaining to crime scene investigation, presentation for identification and attempt for reconstruction as well. It would be expedient to formulate these regulations in a separate section, under the title „common regulations”. At the same time, I recommend the omission of the expression ‘as a rule’ in the common regulations of Section 123 of the Criminal Proceedings Act, as follows:

‘The conduct of crime scene investigation, attempt for reconstruction and presentation for identification shall be recorded by video or audio recorder or other equipment. The video or audio record shall be attached to the files; such record may not be used to a purpose other than the original.’

II. I recommend including the following in the Investigation Decree:

I recommend placing the above regulations in the Investigation Decree according to the following:

1.)

The crime scene investigation, if result can be expected from it, shall be conducted at the scene, if:

a) proving whether the given action is an offence, furthermore, whether it occurred at the assumed scene, requires the examination of the scene;

b) the position of the objects of crime scene investigation, their relation to each other can bear special significance regarding proof, thus their examination is reasonable at the scene;

c) it is reasonable to connect the objects of crime scene investigation to persons, objects found at the scene with methods, procedures of criminal technology;

d) the object of crime scene investigation would be destroyed due to taking it in front of the authority;

e) the object of crime scene investigation is not removable.

2.)

Supplement to Section 34:

The uncovering, recording and safe-keeping of traces, material residues shall be conducted in a manner which allows them to be competent for further expert examination, and allows the subsequent verification of the observance of procedural rules.

3.)

1. *The crime scene investigation shall be video recorded from its commencement to its end, uninterruptedly.*

2. *If the recorder must be switched off, the head of the crime scene investigation committee shall convey the time and reason of the interruption on the recorded material, and do the same at switching the recorder back on. If a change in the number of the ones present or in other circumstances occurs, such change shall also be recorded orally on the material.*

3. *On the recorded video material, the head of the crime scene investigation committee shall monitor the stages of recording traces, and delineate them. He/she shall pay particular attention to the precise place of uncovering the physical means of proof.*

III. Official witness

Thus, I recommend including the following in Paragraph (4) of Section 183 in the Criminal Proceedings Act:

‘If no motion for applying an official witness has been made by the persons entitled in Paragraph (2), the application of official witness may be limited to one or more instances of the investigation activity, significant regarding proof, the fact and circumstances of which shall be documented credibly in the minutes taken thereof.’

Draft of the new Criminal Proceedings Act

The new draft of the Criminal Proceedings Act is available, studyable on the internet.⁵ At overviewing the draft norm, I have welcomed the fact that it includes a part of my proposals (*marked with italics and underlining*):

Crime scene investigation

Section 207 (1) Crime scene investigation shall be ordered and conducted by the court, the prosecutor or the investigating authority if the cognition or ascertainment of the fact to be proven requires the survey of a person, an object, or a scene, or the observance of an object or a scene.

⁵ http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=00003972.TVJ time of download: 8 April 2017

(2) At the crime scene investigation, the physical means of proof shall be uncovered and gathered, and their safe-keeping shall be ensured in a proper manner. On the occasion of the crime scene investigation, the circumstances significant regarding proof shall be recorded in detail, particularly the process and manner of uncovering, gathering the object of crime scene investigation, its location and state. The uncovering, recording and safe-keeping of physical means of proof shall be conducted in a manner which allows the subsequent verification of the observance of procedural rules. If possible and required, audio, video or audiovisual material, drawing or draft shall be prepared of the object of crime scene investigation, which shall be attached to the minutes.

(3) If, in the course of investigation, surveying the object of crime scene investigation at the scene is not possible or only possible with significant difficulty or cost, the crime scene investigation shall be conducted in front of the authority which ordered it.

(4) In the course of the crime scene investigation, expert may be involved.

Common regulations

(separate title)

Section 213 (1) The regulations on crime scene investigation shall be applicable mutatis mutandis to attempt for reconstruction and presentation for identification.

(2) The court and the prosecutor may employ the investigating authority for conducting crime scene investigation, attempt for reconstruction and presentation for identification.

(3) The defendant, the witness, the victim and other person, particularly the person disposing of or possessing the object of crime scene investigation, shall submit to the crime scene investigation, attempt for reconstruction and presentation for identification, shall make the object in his/her possession available for the purpose of crime scene investigation, attempt for reconstruction or presentation for identification. In the case of the defendant, such obligation is enforceable, in the case of the victim, witness and other person, the obligation is enforceable and a disciplinary penalty is imposable.

(4) The crime scene investigation, attempt for reconstruction and presentation for identification shall be audio and video recorded as possible.

IV. List of publications in the topic of the dissertation

1. Gárdonyi, Gergely – Mama, Sándor: A talajradar használatának gyakorlati tapasztalatai a hazai bűnügyi helyszínelésben. [Practical experiences regarding the use of ground penetrating radar in domestic crime scene investigation], *Belügyi Szemle*, 2016:7-8, 70-76.
2. Gárdonyi, Gergely: A bűnügyi technikai szakterület hazai eredményei és a fejlődés lehetséges irányai. [Domestic results in the field of criminal technic and possible directions of development], *Belügyi Szemle*, 2016:7-8, 70-76.
3. Gárdonyi, Gergely: A kriminalisztika tendenciái – Fenyvesi Csaba monográfiája. [Tendencies of criminalistics – Csaba Fenyvesi's Monograph], *Magyar Rendészet* 2015:1, 165-168.
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