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CRIMINALISTICS SCIENTIA SUI GENERIS – ARGUMENTS PRO ET CONTRA

Criminalistics, "Science" or "Technique" of methods of revealing a crime and its offender, crime prevention and generally research of criminal occurrence is a discipline which in contemporary theory exists some kind of misunderstanding what criminalistics really is. Is it a stand-alone science or a subsidiary discipline in the frame of wider area of crime research, or only a technical part of forensic sciences? The authors intend to show criminalistics through non-favor light and they give an answer, what criminalistics really is, from the point of its concept and place in different systems of criminal justice, its scientific object and methods, relations with other cognate disciplines, institutionalization and finally perception by social ambience.

INTRODUCTION

Criminalistics is a discipline that has been a long time discussed in theoretical circles from a point of auxiliary discipline in the wider frame of crime research to points that gave criminalistics an attribute of stand-alone scientific discipline. Mentioned controversy is at the first place result of the fact that criminalistics in its existence partly use methods and achievements of other sciences and with that about criminalistics mostly discuss lawyers, criminologists, and scientists from the other areas of crime research, but the criminalists less. As well to that status of criminalistics has contributed different solutions accepted in different system of criminal justice that are direct consequence of various theoretical approaches. In work which follow we will try to show criminalistics from the points of its different considerations and place in certain systems of criminal justice, object and methods of its research, relations with other cognate disciplines, also some other points and due to this make some conclusions. There is no intention that these conclusions be final and only one because of complexity of this question, but in any case to be a contribution for one clearer attitude toward this discipline.

CRIMINALISTICS, NOTION, DIVISION AND PLACE IN DIFFERENT SYSTEMS OF CRIMINAL JUSTICE

Word Criminalistics coming from Latin word *criminalis* what in word to word translation means criminal, culpable, while word *criminalis* derive from Latin *crimen*, in other words crime. Word *crimen* is a rote of name of some other to criminalistics cognate sciences as a criminology, criminal law, criminal policy etc. Generally by the one part of contemporary scientists and practitioners criminalistics has been defined as a discipline of methods of revealing a crime, but there is also authors who emphasize crime prevention as a one of fields of criminalistics scientific (practical) comprise. Criminalistics intend to clarify the phenomenon of criminal offence, in this sense criminalistics is activity of all subjects of criminal repression in compliance with role which every of them realize, (Pavišić, 1997).

Retrospectively criminalistics doesn't have long history. In literature there are claims that criminalistic as a stand alone scientific discipline arises at the end of XIX century,

with emphasize that some non-scientific approaches of revealing and lightning up the crime already arises at the end of XVIII century (prescientific period of criminalistics), (Pavišić, Modly, 1999). Austrian prosecutor and Judge Hans Gross (1847-1915) had been recognized as a founder of Criminalistics. Gross has written a first work on application of science for purposes of criminal investigation (*Handbuch für Untersuchungsrichter*).

Traditional division of criminalistics is on criminalistic tactic, criminalistic technique, and conditionally criminalistic methodics. Some authors don't recognize criminalistic methodics as a particular field of criminalistics. They point out that criminalistic methodics are only particular criminalistic tactics. This division is characteristic only for some theoretical circles, and as we shall see some determinations of this discipline in certain systems of criminal justice.

Criminalistic tactic deals with methods and means that are not technical natures, and those tactics methods are studied and established for purpose of revealing and clarifying committed criminal offense, as well as in crime prevention, (Vodinelić, 1976). Criminalistic technique deals with methods and procedures of technical, and other sciences with purpose to find, secure, research and offer evidences for purposes of criminal procedure. Finally criminalistic methodics, if we accept them as a separate field of criminalistics, are directed at research of some groups of criminal offences and specific criminal offences.

Also, it has to be mentioned that in a last time some new areas of criminalistics appear and significant number of authors from the field of crime research accepts them. These areas are criminalistic strategy, criminalistic prognosis and others with its theoretical and practical background.

By the question of its place in different system of criminal justice we can talk about a few models of criminalistics. These models goes from those which exist on repudiation even toward name of this discipline, and where its content has been put under other discipline or disciplines, to these in which this discipline comprise wide area of theoretical and empirical approaches to problem of crime and criminality and has complex structure. Further, we will try to express the elements of three of them we think main and enough to give a complete picture of different considerations and role of this discipline. These three models are those adopted in Roman countries, hereupon Germany and Russia and countries under its theoretical influence on this area, and finally in anglosaxonian countries particularly United States so we can call it Anglo – American model of criminalistics.

In countries of German law model, especially in Germany (*Ger. kriminalistik*) and in Russia (*Rus. криминалистика*), as well in countries which accepted Russian concept of criminalistics, or it was the case earlier, this discipline has been mainly recognized as an emancipated discipline of crime research with exactly defined object and methods of research. For criminalistics in these countries is characteristic a long history and tradition as well developed theory and practice of this discipline. Very similar perception of criminalistics can be find in Bosnia and Herzegovina and also other countries of ex Yugoslavia, what is a consequence of former German influence in law sphere and Russian-Soviet former ideological influence. This environment recognize criminalistics as a science that study, finds and perfects scientific, and on practical experience established methods and means, which are the most suitable to reveal and convict a crime offender, to provide and fix up all evidences for settle a real true and to prevent omission of future planed or non-planed criminal offences, (Vodinelić, 1976). That recognition mainly includes the division we mentioned above.

Second model of criminalistics is the one that doesn't recognize content of criminalistics under this name. In these systems of criminal justice the content of criminalistics is settled under other sciences or techniques or has a different name. In Italy for example instead criminalistics used term is *polizia scientifica*, term that comprise field of application of technical and methods of other sciences in research of criminal offences, (Modly, 2002). This model of criminalistics can be find mostly in states of Roman law circle, (Pavišić, Modly, 1999).

Finally there is a third model. This model can be found in countries of anglosaxonian law circle particularly US. This model has a characteristic of exclusive connection of criminalistics with forensic science. In this context some of the considerations of criminalistics are that this discipline involve discernment, acquisition, identification, individualization and evaluation of material traces using scientific techniques in questions of law importance, and technically criminalistic find itself as a part of overall area of forensic sciences, (Lee, Labriola, 2002).

In some Anglo-American sources of literature criminalistic is defined as a science of crime detection, involving application of chemistry, physics, physiology, psychology and other sciences, (Rush, 1986). Criminalistics in this system of criminal justice also has been used for describing the services of a crime laboratory (Saferstein, 1998).

As we can see, each of these models offers different concept of criminalistics, and as a most affirmative seems to be the first one. In the framework of this model criminalistics is a unique area, which comprise application of technical and other sciences in research of criminal offences for needs of criminal procedure, as well as tactical-methodic procedures in criminal investigation. Those systems of criminal justice which accepted Anglo-American kind of considerations of criminalistics, unlike previously mentioned, under criminalistics don't have a whole area of crime detection but exclusively application of technical and other sciences in criminal procedure, in other words forensic sciences. Other aspects of criminalistics are comprised with "so called" criminal investigation and don't create a unique entity with forensic sciences. This concept of criminalistics doesn't negate scientific establishment of criminalistics.

OBJECT AND METHODS

The existence of every scientific discipline is absolutely conditioned with possession of its own object and method(s) of scientific research. To gave a complete answer on question does criminalistics comply with mentioned conditions, we need to answer on a few questions:

First, what is an object of criminalistic research? The majority of authors see object of criminalistic research in revealing a crime, its offenders and its proving. Also some authors emphasize that area of scientific comprise of criminalistics is crime prevention, in the sense of prevention of future criminal offences (criminalistic crime prevention, crime prevention in criminalistics). Prevention, proving and revealing of crime and its offenders from the point of crime combating is an area placed before legal lighting up of these categories and theirs legal determination in criminal procedure, or at least area that goes side by side with it. Without scientific approach to problems of prevention and revealing of crime and its offenders it can not be possible to go ahead at this area and to comply with requests which society sets up through the institution of legal order.

Second, whether the object of criminalistic research is object of research of some other disciplines? The phenomenon of crimen by its physiognomy is research object of

many disciplines but every in its sporadic segment. So from the point of crime as a social occurrence deals sociology, with its causes and its phenomenology deals criminology, with determination of criminal offences and conditions for criminal liability, prescribing of criminal sanctions deals criminal law and so on. But orientation of any other science is not at lighting up a crime and partly its prevention as it is case with criminalistics. As we see there is no other discipline that has for research object this part of crime research. But there are some intermixtures of content of criminalistic research, about it we will discuss more when we analyzing relation of criminalistics with other cognate disciplines.

Third, what methods of research criminalistic use? Unlike of research object of criminalistics which undoubtedly separate criminalistics from the other disciplines that research crime, and which as such represent important argument in favorem to criminalistics as a science, at the same time on the field of methodology of criminalistic research exist significant disputes. These disputes find roots in fact that criminalistics in its theoretical and practical approach use together with its own, methods, cognition and achievements of other disciplines. Claims that criminalistics still is not on this level of development to be recognized as a stand alone science, or that criminalistics is only a functional totality of connected particular scientific disciplines, (Pavišić, 1997), are mainly consequence of the fact of multidisciplinary methodological approach in criminalistics.

However, when criminalistics use methods of other sciences, it does that on very specific way, customizing them to specificity of criminalistic research objects, rules, and needs. As its emphasized it isn't a word about clean mechanical application of these methods, but those methods have been transformed and actively customized to needs of criminalistic science, (Modly, 2002).

Finally, it can be very difficult to imagine science that doesn't use achievements, cognition and methods of other sciences. It is well known example of medicine that uses methods of chemistry, biology and other sciences however nobody disputes medicine as science.

But there is a one moment that we didn't find in literature that can play a significant role in evaluation of criminalistics scientificity from the point of its methodology. This moment is carriers of this approach. Every scientific approach if we consider it as a "...seeking the most trust-worthy answers possible to certain kinds of interesting or important questions", (Fitzgerald, Cox, 1994), except its object and methods requires appropriate subjects that will lead it. If we want to perform some criminalistic research, it is logical that it has to be lead by subjects that dispose with criminalistic cognition and knowledge. In this moment there is no these subjects, and scientists from other scientific areas perform a research on the field of criminalistics. That is a main reason why the criminalistic have the least benefit from researches at its own area, but that is not the case with other disciplines. In one of his works 1898 Gross said: "*Undoubtedly it can be considered that criminalistics has arrived to level of stand-alone discipline and has won a right for a place in science*", (this citation is from: Schurich, 1998). However more than hundred years past from this claim and thanks to criminalistics other disciplines are emancipated, unlike criminalistic that still has been disputed.

RELATION WITH OTHER COGNATE DISCIPLINES

Modern theory of crime research usually connect criminalistics with sciences that have research object *crime* in general, or particularly, like criminology, forensic sciences, criminal procedure, criminal law, crime control policy and others. In this work we will especially pay attention to relation of criminalistics with criminology, criminal procedure and forensic sciences. This we will do because criminalistics is very close to these sciences, more than to others, and because the majority of problems for criminalistics date from inconsistent relation with other sciences particularly mentioned.

Criminology is a discipline, that has a longest tradition in crime research, and not without reason has an attribute of mother of all criminal sciences. The object of research of criminology, in shorter, is etiology and phenomenology of crime. It has been consider that between criminology and criminalistics exists mutually relation regarding to a question why crime is committed and in what way. On the first question criminology gives an answer, because the problems of crime causes are object of research of criminology. On the second question criminalistics gives answer because criminalistics has to fix up all models of committing of some specific crime, (Mladenović-Kupčević, 1997). Of course relation between these disciplines can't be observed exclusively through this, because criminalistics is interested in content and cognition of the fields of etiology and phenomenology of crime, as well criminology in achievements of criminalistics, but it is important because it represent one of the fundamental basis for distinction between two disciplines. In literature it hasn't been unknown that criminalistics by one part of the authors has been consider as integral part of criminology.

Criminal procedure is a law discipline that has the closest place to criminalistics. Reason for that is simple; the purpose of this procedure is "*apprehension, trial, prosecution, and sentencing the criminals*", (Rush, 1986). And criminalistics has function just to give appropriate cognition for realization of this purpose, to be a "*Queen of investigative procedure*", (Soine, 1998). About relationship of these two disciplines, there are claims that criminalistic is a subsidiary discipline of criminal procedure. These claims are founded on argumentation that measures of criminalistics are fulfilling the frame of rules proposed by criminal procedure, and in fact make the content of these rules. However content of criminalistic procedures are wider than rules of criminal procedure, and in this sense it's difficult to talk about criminalistics as subsidiary discipline of criminal procedure. The rules of criminalistics cover more area than rules of criminal procedure, and one of the reasons for that is because these rules are based on principles on technical and other sciences, (Modly, 2002). This fact as well disputes points about criminalistics as a legal discipline. We are standing at standpoint that criminalistics and criminal procedure have a lot of mutual interest, but there are separate disciplines.

Under the notion of forensic sciences (Lat. *forum* - public place) connote application of science in law, in other words sciences which have been used for need of judicial procedure. A more detailed definition is that forensic sciences are application of science to criminal and civil law by the police agencies in a criminal justice system, (Saferstein, 1998). Under these definitions, and this is what has been said earlier in discussion about place of criminalistics in different systems of criminal justice relation between criminalistics and forensic sciences can be perceived throughout a few points. First criminalistics is a technical part of forensic sciences, (Lee, Labriola, 2002), second forensic sciences are part of criminalistics so *called criminalistic –technique*, and criminalistics is other name for forensic sciences. In literature can be find claims that criminalistics and forensic sciences are usually identified, (Swanson, Chamelin, Territo, 2003).

INSTITUTIONALIZATION OF CRIMINALISTICS

One of the more important components of every science is its academic and research institutionalization. This component of science is very important because of a provision of cognition, which should be a guaranty of its existential and development in the future. Today many educational and other institutions like research institutes, laboratories etc. study appropriate criminalistic contents. Some authors emphasize that criminalistics as a science has come up to level of institutional science, which has been shown by fact that in the world exist many institutes and scientific centers that realize many number of research projects with purpose of solving many theoretical and methodological problems of criminalistics, (Bakić, 2001).

But the same can't be said for criminalistic institutionalization in context of its studying at the academic level. Contemporary approach in which criminalistics has been studied, as a secondary subject on universities, under our opinion is a mistake. Except a few high educational institutions in the world (Faculty of criminalistic sciences of Sarajevo University – also called Faculty of criminal justice sciences, California State University, Los Angeles and University of Illinois Chicago which offer a degree of Master of Science in criminalistics) there is no interest for criminalistic studies as a main discipline. In more number of cases criminalistics has been studied at colleges that don't have character of the universities (and without possibility for postgraduate education) or at the universities but in the frame of other faculties especially law (Department of criminalistics at Law Faculty of Moscow state university, Criminalistics as electoral subject at the Law Faculty of University in Zagreb etc). This situation contributes to contemporary status of criminalistics and we think that this is a direct consequence of unclear postures about criminalistics discussed in this work.

CRIMINALISTICS AND MODERN SOCIETY

Significant factor in understanding of criminalistics is society by itself. One of the greatest challenges of contemporary society is crime with immense proportions and the way that will settle towards. Criminalistic can play great role in a system of disciplines that deals with that problem. Up today experience undoubtedly shows that there has been inadequate attitude of society toward criminalistics and its development in autonomous direction, with a perception of criminalistics as a police skill and proceedings which under strict law rules and due to application of methods and cognition of other sciences has to be functional. Is that point appropriate or not, that is difficult to say, although it seems that between a few main approaches to research of crime occurrence society always chooses that one with no justification of criminalistics as a stand alone scientific discipline, favoring multidisciplinary approach in which criminalistics should be an scientific inactive field for application of achievements of other research entities, without wish and possibilities to settle things differently.

Certain changes can be seen in last time. Demonstration of that is modification of earlier and application of completely new and differing forms of combat of crime that directly or non-directly affirming criminalistics, its methods and procedures in contemporary conditions at national and international levels. New approaches simply doing that criminalistics no matter how we considering it a science, technique or skill more and more arising in a global field of knowledge which achievements use all subjects of law enforcement.

CONCLUSION

After all what has been exposed in this work the question about criminalistics scientificity arising as a very difficult for an exact answer and we thought partly under influence of situational observations. It is very hard to get over the impression that in existing circumstances it can be absolutely impartial. Accepting points that consider criminalistics as a subsidiary discipline, system of knowledge in a system of criminal justice, but not as a science, the whole network of scientific approaches to crime detection and prevention, though has scientific foundation stay without its materialization in context of separate scientific area. On the other side points which see criminalistics as a total scientific emancipated science suffer from incapacity to contradict some claims regarding to fact that many methods which criminalistics use are methods which belong to other sciences and other areas of scientific research, and to give an answer on some other questions about it researches.

To this can be added many disagreements in terminology and as well considering of content of this discipline. Anglo-American model show as quite affirmative approach to criminalistics as a scientific discipline, which unfortunate comprise only forensic part of criminalistics as a substantial its field and in fact other name for it. Some other models, which consider criminalistics as a unique area of application of technical and other sciences for purpose of criminal procedure and criminal investigation at theoretical and institutional level, don't hold clear point about its status.

Anyway we thinks that problems mostly generate just insufficient level of academic institutionalization of this discipline. Fact that there is a small number of institutions of universities nature at which criminalistic can be studied as a main discipline at graduate and postgraduate level, produce a logical consequence of insufficiency of subjects that need to be a carriers of criminalistic scientific and practical cognition, and with that a main factor in its development. Expectation that to this discipline and its autonomy will contribute scientists and practitioners from other areas is really unthankful. Criminalistic should be allowed to develop and reproduce its cognition creating subjects who will contribute to its individuality, and the question of its scientific or non-scientific nature will become unnecessary.

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