

Legal regulation of methods of criminalistic practice

Abstract

Why does the Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code) only regulate certain methods of criminalistic practice? Should specific criteria be followed when deciding whether to regulate criminalistic methods in the form of law? Do these criteria apply to all methods of criminalistic practice without any distinction? The author reflects on these questions in her work. To answer them, she chooses three criminalistic methods - eyewitness identification, identification by biological traces and scent identification. As these methods differ from each other in their historical development, form of legal regulation, and current approach of case law, we can use them to illustrate a wide range of advantages, pitfalls and solutions to legal regulation of methods of criminalistic practice. The author analyses these aspects, takes a reasoned stance on them and proposes specific substantive solutions.

In the first chapter, the author reveals the traditional character of eyewitness identification, with strong roots in the legal regulation since the Austro-Hungarian Empire. She charts the development of the legislation up to the present day and highlights the approach taken by the Constitutional Court of the Czech Republic in assessing the evidentiary value of this method. The second chapter is devoted to the method of identification by biological traces and provides an insight into the scientific development up to forensic DNA analysis. The description of the development of the legal regulation focuses on its conflict with constitutionally guaranteed rights in relation to the retention of personal data obtained from the collection of biological material for the purpose of future identification. The topic of the third chapter is scent identification, with attention given only to criminalistic olfaction. This method has raised many questions in the professional and lay public over the last decade. After introducing the history of service cynology, the author reflects on the reliability of this method in the light of the results of scientific research and groundbreaking case law. In the fourth and final chapter, the knowledge gained in the preceding chapters is summarized and a solution is proposed in terms of the desirable form and content of legal regulation of these methods of criminalistic practice.

Key words: methods of criminalistic practice, internal regulations of the Police of the Czech Republic, legal regulation in the form of a law, eyewitness identification, identification by biological traces, scent

identification