

CRIME SCENE INVESTIGATION AND RECONSTRUCTION – CRIMINAL PROCEDURE AND CRIMINALISTICS ASPECTS IN NORTH MACEDONIA

Professional paper

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Sažetak

With the beginning of the criminal procedure, in its first part of the preliminary procedure stage (pre-investigative and investigative), legally relevant facts are determined through evidentiary means, by which we mean sources from which the evidence bases are obtained. The crime scene investigation and reconstruction are integral parts of the evidentiary actions system that are applied within the framework of criminal and criminal proceedings with the aim of efficient and effective research, elucidation, and proof of the criminal event.

The crime scene investigation is a systematic action by which, by the provisions of the law, objects, traces, and other circumstances important for clarifying the criminal legal event are taken, expertly processed, and in the crime scene investigation documentation registered, and fixed.

Crime scene reconstruction is determining or eliminating the events and actions that occurred at the crime scene through analysis of the crime scene pattern, the location and position of the physical evidence, and the laboratory examination of the physical evidence. Reconstruction involves the systematic study of related information and the logical formulation of a theory.

Ključne riječi

crime scene investigation and reconstruction, evidence means, investigation, criminal procedure, forensic procedure

1. INTRODUCTION

There are different approaches to defining the concept of crime scene investigation: a procedural definition of crime scene investigation, a criminalistic definition of crime scene investigation, and a specific definition of crime scene investigation as a systemic action.

The procedural definition of crime scene investigation is the oldest and most common definition of crime scene investigation based on the Law on Criminal Procedure. According to this approach, the crime scene investigation is an investigative, i.e., procedural action undertaken by the Criminal Procedure Code and consists of the immediate sensory observation of facts important for clarifying the crime, which is registered in the crime scene investigation minutes.

Through the criminological definition of crime scene investigation, criminologists consider that procedural definitions do not cover the essence of crime scene investigation, which is the professional activity of crime scene investigation. Crime scene investigation is not limited to immediate sensory perception. Forensic definitions are mostly implicit, but there are also explicit definitions. These definitions accept that the crime scene investigation is a procedural action, that they are based on sensory observation, that they are in line with the CPC, and that the crime scene investigation report is the only important document of the crime scene investigation. However, these authors point out that the crime scene investigation is also a criminal act, they point out the importance of the thinking activities of the bodies that carry out the crime scene investigation and state that the professional work carried out during the crime scene investigation is an important part of it. Furthermore, the criminal definitions point out that criminal actions represent the essence and content of the crime scene investigation, and the CPC only determines the form of the crime scene investigation. (B. Murgoski, 2003)

Respecting the duality of the crime scene investigation (process and criminal segment), a special system definition of the crime scene investigation has been singled out, which best determines the meaning and form of the crime scene investigation. According to this, modern approach, the crime scene investigation is a systemic action by which, by the provisions of the law, objects, traces, and other circumstances that are important for clarifying the criminal legal event are taken, expertly processed, and registered and fixed in the crime scene investigation documentation.

So, the basic characteristics of the crime scene investigation are:

- the investigation is a systemic action (and not only procedural, only investigative, only criminal, etc.),
- is implemented by the provisions of the law,
- it is observed during the crime scene investigation (it is not only an immediate sensory observation, but it can also be indirect, with the help of various aids),
- during the crime scene investigation, objects, traces, and other important circumstances are professionally processed (and not just observed).
- what is significant (but not everything) is registered and fixed in the crime scene investigation documentation (and not only in the crime scene investigation minutes) (V. Vodinelic, 2008)

The crime scene reconstruction is an integral part of the system of evidentiary actions that are applied within the framework of criminal proceedings during the investigation and criminal procedure with the aim of efficient and effective research, elucidation, and proof of the criminal event.

The crime scene reconstruction is the process of confirming or eliminating possible events and activities that occurred at the crime scene, through on-site analysis, location, and position

of material evidence, as well as laboratory testing of the same evidence. Reconstruction not only involves the scientific analysis of the scene, and the interpretation of the evidence but also involves the systematic study of all relevant information and the logical formulation of theories. The reconstruction, that is, the quality of its results, completely depends on the available fund of evidence and facts.

The reconstruction consists either in repeating how the crime was committed, in certain stages and procedures, or in placing objects and persons in a certain position to verify the given statements. If we take the above as a criterion for division, it follows that there are two types of reconstruction, reconstruction of the entire criminal event or complete reconstruction and reconstruction of certain parts of the criminal event or partial reconstruction. What should be emphasized when it comes to the reconstruction of the event is of course that it is always carried out in artificially created conditions, at the very place where the criminal event took place. That is why it is similar to the crime scene investigation in terms of its characteristics, because within its framework some facts and circumstances are artificially repeated, i.e. it is a simulation of the criminal event. According to criminal theory, that simulation must be accompanied by circumstances that are similar in terms of place and time to those prevailing at the time of the commission of the crime. (V. Pivovarov, M. Nikolovski, 2016)

2. LEGAL FRAMEWORK ON CRIME SCENE INVESTIGATION AND RECONSTRUCTION IN THE REPUBLIC OF NORTH MACEDONIA

During the criminal procedure (through the single process of the pre-trial procedure and the investigation) legally relevant facts are determined through means of evidence (media probandi), by which we mean sources from which the evidence bases are obtained, namely: witnesses, experts, crime scene investigation and reconstruction, confession and material evidence.

The crime scene investigation is undertaken by the public prosecutor, and upon his authorization, by the judicial police, when the determination or clarification of an important fact in the procedure requires immediate observation. To verify the obtained evidence or determine the facts that are important for clarifying matters, the authority leading the procedure can determine the reconstruction of the event, which is carried out by repeating the actions or situations in the conditions under which, according to the obtained evidence, it took place the event. If in the statements of individual witnesses or suspects, i.e. accused, the actions or situations are shown differently, the reconstruction of the event will, as a rule, be carried out separately with each of them.

According to the Macedonian Law on Criminal Procedure (Art. 230 of the Criminal Procedure Code), a crime scene investigation is undertaken when to establish or clarify some important fact in the proceedings, immediate observation is required. From a criminological point of view, the investigation is a procedurally regulated system of criminological-tactical and technical actions, which are carried out with immediate sensory observation (or with the help of an “extension of the senses” – technical aids, a magnifying glass, etc.) and with the study of material objects with the help of on the versions that are planned (based on the methods of induction, deduction, generalization, abstraction, comparison, analysis and synthesis) and checked in parallel with the crime scene investigation (its flow), the overall situation on the spot

is fixed as a material-ideal system (state, characteristics, properties and the interconnections and relationships of evidentiary information), in its unchanged, original state and manifested forms to clarify the structure of the criminal event.

The crime scene investigation is one of the means of evidence which, unlike the current CPC, with the new CPC is given under the authority of the public prosecutor. The crime scene investigation is undertaken by the public prosecutor, and upon his authorization by the judicial police when immediate observation is required to establish or clarify any important fact in the procedure. The suspect, the defense attorney, and the injured party can be present during the crime scene investigation. Their absence does not delay the taking of the crime scene investigation

According to the Law on Criminal Procedure (Art. 231 of the Criminal Procedure Code), to verify the obtained evidence or determine the facts that are important for clarifying matters, the authority that conducts the procedure, which means that until the main hearing, that authority is given to the public prosecutor, can determine the reconstruction of the event, which is carried out by repeating the actions or situations in the conditions under which, according to the evidence obtained, the event took place. If in the statements of individual witnesses or suspects, i.e. accused, the actions or situations are shown differently, the reconstruction of the event will, as a rule, be carried out separately with each of them.

The mentioned reconstruction can be carried out completely or partially using computer simulations. The reconstruction must not be carried out in a way that offends public order and morality or endangers the life or health of people. During the reconstruction, if necessary, separate pieces of evidence can be presented again. The authority that carries out a crime scene investigation or reconstruction can request the help of an expert from a criminal-technical, traffic, or other profession, who, if necessary, will help in finding, securing, or describing the traces, will carry out the necessary measurements and recordings, will make sketches and photo documentation or will collect other data. An expert can be called to the crime scene investigation and the reconstruction if his presence would be beneficial for giving a finding or opinion. (Art. 231 para. 2 and 3 of the CPC).

3. CRIME SCENE INVESTIGATION AND SECURING THE PLACE OF THE CRIME SCENE AS AN OPERATIONAL TACTICAL MEASURE

According to the criminological principle of urgency, the place where the criminal legal event took place must be done as quickly as possible, first of all, because of the danger of traceological information deficit, but also because of the critical epistemological time when it comes to personal sources of information. The reasons for the necessity of the most urgent securing of the scene together with traces and objects are included in the complex of actions that are closely related to the implementation of investigative actions such as the crime scene investigation.

The success of the crime scene investigation and other investigative actions primarily depends on the place of the event being found in as little altered state as possible from the one that occurred during the explosion. When committing various crimes, the consequences of causing such crimes can result in huge material damage as well as human casualties. At the place where the criminal legal event took place, various consequences occur that leave specific

traces. At the scene of the criminal legal event, security of the scene is approached as the first operational action that is taken before starting the investigation and requires a numerically greater presence of authorized police officers. The traces found at the scene indicate the beginning, course, and action of the execution of the critical legal event as well as the discovery of the perpetrator of the crime. The police officers, after the assessment has been made to determine the lines of security at the scene of the incident, depending on the situation on the ground, it is necessary to make an additional assessment for possible additional actions taken by the perpetrator, thus predicting a larger scope of the scene at which they should access to uninvited persons is prohibited. (B. Simonovik, 2004)

In the criminalistics theory, not enough attention is paid to the security of the scene, although this operational tactical action is the basis of further investigation. The inappropriate, unprofessional, and unprofessional implementation of this operational tactical measure initially leads to a lack of success in further investigation because, until the arrival of the crime scene investigation team, the material evidence found at the scene may be contaminated and therefore unusable in the further proceedings. Persons found at the scene of the event (eyewitnesses, the victim, and the possibility that the perpetrator of the crime may also be found at the scene of the event or the surrounding area) must be detained identified, and dealt with by criminal law.

One of the tasks of the authorized police officers who are the first to arrive at the scene to secure it is to provide first aid to the victims, that is, to organize the calling and arrival of other services that are competent to intervene (ambulance, anti-fire units, and others) professional services). It is precisely the taking of such actions that is contrary to the traceological rules, because when taking measures to help the victims of the committed crime, it may inadvertently lead to the destruction of some of the traces found at the scene of the event, and thus to a change in the actual condition. However, the authorized police officers who are hired to secure the scene, especially for crimes committed with explosive devices, should have basic knowledge according to the nature of the crime committed and the criminal legal event, which are in close correlation to perform the appropriate operational tactical action. A basic postulate of the criminal rules is that the scene of the event should not only be secured but that it should be done professionally because the crime is a mirror of the criminal legal event and appears as the starting and ending point of a criminal investigation. (M. Angeleski, 1993)

4. IMPORTANCE OF CRIME SCENE RECONSTRUCTION OF THE CRIMINAL LEGAL EVENT – PRINCIPLES AND PHASES

It is often useful to determine the actual course of a crime by limiting the possibilities that resulted in the crime scene or the physical evidence as encountered. The possible need to reconstruct the crime is one major reason for maintaining the integrity of a crime scene. It should be understood that reconstruction is different from 're-enactment', 're-creation', or 'criminal profiling'. Re-enactment in general refers to having the victim, suspect, witness or other individual re-enact the event that produced the crime scene or the physical evidence based on their knowledge of the crime. Re-creation is to replace the necessary items or actions at a crime scene through original scene documentation. Criminal profiling is a process based on the psychological and statistical analysis of the crime scene, which is used to determine the

general characteristics of the most likely suspect for the crime. Each of these types of analysis may be helpful for certain aspects of a criminal investigation.

Reconstruction is based partly on scientific experimentation and partly on past experiences. However, its steps and stages, as found in forensic science, closely follow basic scientific principles, theory formation, and logical methodology. It involves consideration and incorporation of all investigative information with physical evidence analysis and interpretation molded into a reasonable explanation of the crime and its related events. Logic, careful observation, and considerable experience, both in crime scene investigation and forensic examination of physical evidence, are necessary for proper interpretation, analysis, and, ultimately, crime scene reconstruction (W. J. Koen, B. Goetz, 2017)

4.1. Principles In The Criminal Scene Reconstruction. The foundation of crime scene reconstruction is established by following the basic principles used in the forensic examination of physical evidence. The Locard theory of transfer is the fundamental basis of any forensic analysis. Although the lack of transfer has limited value in forensic laboratory examinations, it still has significant importance in crime scene reconstruction.

4.1.1. Recognition – Any type of forensic analysis usually starts from the recognition of the potential evidence and separation of this from those items that have no evidential value. As discussed in the previous chapters, once the evidence is located, every effort and precaution should be used to preserve, document, and collect this evidence. Laboratory analysis and comparisons of physical evidence are used to identify objects, substances, and materials, and to trace their origin. Once an item is identified it is then compared with known reference materials or standards. Depending upon the outcome of the comparison between the questioned sample and the known samples, one can then attempt to individualize the evidence and determine its origin. Once the crime scene appearance has been studied and the examination of physical evidence carried out, the crime or case can then be reconstructed.

Any type of reconstruction generally starts from recognition. Unless the potential evidence can be recognized, no further reconstruction can be carried out. Although the examination of a macroscopical scene or a microscopical scene is different, however, the general approach remains the same. Once potential physical evidence has been recognized the investigator should always make every possible effort to properly document, collect, and preserve the evidence. If a question arises, the investigator should always contact an expert in the field before any alteration of the evidence is done. This is important because most conditional evidence and pattern evidence can be easily altered or destroyed. It is very important to emphasize that once such evidence has been altered, the ability to conduct a reconstruction, will be limited.

4.1.2. Identification Of Persons And Items – Identification is a comparison process, that utilizes the class characteristics of a standard object or known substance to compare with the evidential item collected from the crime scene – by comparing the physical properties, morphological properties, chemical properties, and biological properties. Even the identification of persons also starts with the same logical process of physical type of identification that uses properties such as height, weight, size, race, hair and eye color, etc. to include or eliminate someone. Then more specific measurements

can be carried out to individualize a person. The types of physical measurements are referred to as anthropometry, a system developed by Alphonse Bertillon in the early 1900s. However, if one identifies a friend or relative, one generally uses a combination of class characteristics and the special characteristics (individualizing characteristics) of the person and then compares them to a mental picture of the person. This process of comparison is the same process used to identify hair, weapons, or clothing.

When an item of physical evidence is identified but cannot be truly individualized, it will always have similar class characteristics; for this reason, statements about how similar these characteristics are can sometimes be made. The degree of similarity of particular evidence or characteristics depends on many factors, and varies from being fairly easily calculated, as in the case of blood groups, to being limited to only broad estimates of similarity.

4.1.3. Individualization – Individualization is unique to forensic science; it refers to the demonstration that a particular sample is unique, even among members of the same class. It may also refer to the demonstration that a questioned piece of evidence from a crime scene and a similar known sample of evidence have a common origin. Thus, in addition to class characteristics, objects and materials possess individual characteristics that can be used to distinguish members of the same class. The nature of these individual characteristics varies from one type of evidence to another, but forensic scientists try to take advantage of them in efforts to individualize a piece of physical evidence. Some types of evidence can be truly individualized, but with some other types, an approach to the goal of individualization is possible. These types of individualizations are referred to as partial, and in some cases, they are nothing more than refined identifications, such as genetic marker determination from a bloodstain, DNA typing of semen evidence, or trace elemental analysis of paint chips. The term identification is sometimes used to mean personal identification (the individualization of persons). Fingerprints, for example, can be used to ‘identify’ an individual. The terminology is unfortunate since this is an individualization. Likewise, dental evidence and dental records may be used by a forensic odontologist in making personal individualizations in situations where dead bodies cannot be readily identified otherwise (such as in mass disasters or cases of fire and explosions). The identification and individualization analyses of physical evidence and the conclusions drawn from them are important ingredients in a final reconstruction.

4.1.4. Reconstruction – Reconstruction is based on the results of crime scene examination, laboratory analysis, and other independent sources of information to reconstruct case events. Reconstruction often involves the use of inductive and deductive logic, statistical data, information from the crime scene, pattern analysis, and laboratory analysis results on a variety of physical evidence.

Reconstruction can be a very complex task, linking many types of physical evidence, stain pattern information, analytical results, investigative information, and other documentary and testimonial evidence into a complete entity.

The developing fields of artificial intelligence (CODIS and AFIS, for example) and expert systems have opened up a new dimension in reconstruction. These systems allow forensic scientists to model and representation of laboratory analysis results,

reason and enact a crime scene, logic, compare and profiling of a suspect, and make logical decisions concerning the case. Advances in hardware and software have added systematic problem-solving to the forensic scientist's repertoire. Computer technology allows communication between the user and the expert system – in a sense each is helping the other to solve a specific forensic problem. Reconstructions are often desirable in criminal cases in which eyewitness evidence is absent or unreliable. They are important in many other types of cases, too, such as automobile and airplane accidents, fire and arson investigations, and major disasters.

4.2. Phases In The Criminal Scene Reconstruction – Reconstruction is considered a scientific fact-gathering process. Reconstruction generally involves a group of actions that will set the stage for crime reconstruction. The following are the five separate stages commonly used in the process of reconstruction:

4.2.1. Data Collection: all information or documentation information obtained at the crime scene, from the victim, or witnesses. Data including the condition of the evidence, obvious patterns and impressions, condition of the victim, etc., are reviewed, organized, and studied.

4.2.2. Conjecture: before any detailed analysis of the evidence is obtained, a possible explanation or conjecture of the events involved in a criminal act may be done, but it must not become the only explanation being considered at this stage. It is only a possibility. There may be several more possible explanations, too.

4.2.3. Hypothesis Formulation: further accumulation of data is based on the examination of the physical evidence and the continuing investigation. Scene examination and crime scene investigation of the physical evidence must be done. Scene and evidence examination includes interpretation of bloodstain and impression patterns, gunshot patterns, fingerprint evidence, and analysis of trace evidence. This process leads to the formulation of an educated guess as to the probable course of events, a hypothesis.

4.2.4. Testing: once a hypothesis is formulated, further testing must be done to confirm or disprove the overall interpretation or specific aspects of the hypothesis. This stage includes comparisons of samples collected at the scene with known standards and alibi samples, chemical, microscopically, and other analyses and testing. Controlled testing or experimentation of possible physical activity must be done to collaborate with the reconstruction hypothesis.

4.2.5. Theory Formation: additional information may be acquired during the investigation about the condition of the victim or suspect, the activities of the individuals involved, the accuracy of witness accounts, and other information about the circumstances surrounding the events. All the verifiable investigative information, physical evidence analysis and interpretation, and experimental results must be considered in testing and attempting to verify the hypothesis. When it has been thoroughly tested and verified by analysis, it can be considered a plausible theory.

5. CONCLUSION

The crime scene investigation represents one of the most important and effective means of evidence for establishing the truth in the criminal procedure itself. This procedural evidentiary action is always taken by the competent authority of the criminal procedure *ex officio* (by official duty) when determining the facts require immediate observation.

The basic purpose of the crime scene investigation, as a procedural evidential action, is to establish and clarify facts that are important for obtaining a clear idea of the circumstances under which the criminal-legal event that is the subject of interest took place. Without the help of the investigative action, we would not be able to find out about the facts of the criminal-legal event and consequently, we would not be able to draw the necessary conclusions for its clarification.

To verify the obtained evidence or to determine the facts that are important for clarifying matters, the authority leading the procedure may decide to perform a reconstruction of the event. It is carried out in such a way that the actions or situations will be “repeated”. If in the statements of individual witnesses or suspects, i.e. accused persons, the actions or situations are shown differently, the reconstruction of the event will, as a rule, be carried out separately with each of them.

The reconstruction must not be carried out in a way that offends public order and morality or endangers the life or health of people. During the reconstruction, if necessary, separate pieces of evidence can be presented again. Reconstruction as an investigative action can have different goals. Thus, for example, one of the objectives of the reconstruction would be to make up for the possible omissions made during the crime scene investigation or, on the other hand, to remove the possible contradictions that appeared due to an unprofessional or wrongly performed crime scene investigation.

At the same time, the purpose of the reconstruction could be to determine the way the crime was committed when this could not be achieved only with objective research on the spot during the crime scene investigation. Furthermore, with the help of the reconstruction, it would be possible to confirm the defense of the accused person or to check the accuracy of his confession, as well as to check the accuracy of the testimony of the witness concerning the circumstances related to the place of the crime in question crime.

Before proceeding with the implementation of the reconstruction as an investigative action, certain preparatory actions must be carried out, which refer to a more detailed acquaintance with the available materials, i.e.: the crime scene investigation report, the sketches, the photographs, the statements of the witness/witnesses, the statements of the accused / the defendants, determining the facts and circumstances that should be verified and established with the help of the reconstruction, determining the place and time of performing the reconstruction, determining the conditions in which the reconstruction must be carried out, as well as determining the method that will be used for its implementation, all to ensure the smooth flow of the reconstruction.

Reconstruction, to be accurate and adequate, must be based on a rigorous scientific examination of the material evidence and the environment around the scene. These tests must be based on the application of the scientific method. Interpretation of evidence must rely on logical and critical thinking, as it is not simply observation and speculation. At the same time, we should

take into account that the scene is a dynamic location, it is not a “moment frozen in the past”, but on the contrary, it is an object that is constantly subject to change.

Large changes can occur if the time interval between the event and the search and documentation of the scene is longer. For the reconstruction, which is carried out primarily due to: verification of the presented evidence; determining the facts that are important for clarifying the event; if necessary, and re-present certain evidence, very little has been researched or written in the last ten years in the field of criminology and criminal procedural law. Because the Law on Criminal Procedure does not prescribe the form for implementing the reconstruction of the scene of the event, the authority that implements the reconstruction implements it in a way that it considers to be the most appropriate in the specific case, while helping in the selection of methods and means the rules of forensic science. One of the most significant elements of reconstruction is the setting and elaboration of reconstruction versions as mental assumptions about the crime and its perpetrator.

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