

Guiding principles on organizing and carrying out the crime scene investigation

Delia MAGHERESCU, PhD

Lawyer, Gorj Bar Association, Romania
delia_magherescu@yahoo.com

Abstract: *The crime scene investigation is a judicial stage basically achieved in the investigation phase of the penal proceedings. During the crime scene investigation the judicial bodies are looking for discovering crimes' traces in order to gather evidence and identify the perpetrators. The main aim of the judicial activity is subordinated to the entire penal proceedings ones, consisting in bringing charged the persons who committed offenses, in accordance with their guilt and avoiding the innocent persons' criminal liability. The current paper focuses on the aspects of identifying the most relevant guiding principles which are priority applied during the crime scene investigation. Knowing the fact that the crime scene is full of evidence, the judicial bodies must proceed to organizing the activity of criminal investigation in respecting all fundamental principles, such as objectiveness, efficiency, rapidity, opportunity, confidentiality, whose violation generates serious unbalance both in achieving the criminal investigation aims and the penal proceedings entirely.*

Keywords: *crime scene investigation; guiding principles; forensic tactics; criminal investigation; penal proceedings.*

Framing subdomain: *Criminal Law*

Introduction

The complexity of criminal cases having as objective the forensic investigation of serious crimes as well as the penal proceedings approach from the forensic science point of view are referential topics which have been taken into account in carrying out the current paper. On this direction, a set of guiding principles has been outlined, adopted by the judicial bodies during their activity of forensic investigation of crime scene.

In practice, those principles came under forensic science tactics in order to reach the proposed purpose of crime scene investigation, which will lead to finalizing the scope of penal procedure entirely, knowing the fact that, beyond standardization of judicial activity, solving the penal cases based on pertinent, conclusive and genuine evidence means a priority.

The forensic investigation of serious crimes, especially those committed by violence [1], has particular features which impose judicial bodies to use certain forensic techniques and tactics, in such a way to assure gathering evidence necessary for solving the penal cases.

From a tactical point of view, this activity is focused to discovering, fixing, preserving and carrying up the offenses' traces, which permit the investigation in laboratory of the patterns gathered from the crime scene [2].

From a technical point of view, the forensic science is not a solitary one and for this reason it creates functional relations with the other scientific areas, both legal and other ones, such as physics, chemistry, mathematics and biology. Those permit judicial bodies of forensic investigation to analyse in laboratory the patterns gathered from the crime scene and formulate scientific opinions which will be taken into account by the court of law in pronouncing legal decision.

Taking notice of both directions of penal cases criminal investigation, it is obvious that this activity is a bidirectional one, which involves the common forensic investigation activity from the crime scene and the laboratory analysis of crimes' patterns also discovered on the crime scene.

Regarding the concept of crime scene investigation, it is clearly that the activity itself must be viewed in its complex of activities which define and feature both the activity on the crime scene and the laboratory activity.

At the same time, it is remarked that, beyond the guiding principles which will be discussed in the current paper, the forensic science and implicitly the activity of investigating crime scene are focused on general principles. They refer to the situation of committing offenses which produces modifications in the environmental area. This means that it supposes traces on the crime scene and, last but not least, supposes using certain instruments.

1. Researching methodology

In carrying out the current paper, having as topic the aspects on organizing and carrying out the activity of criminal investigation of the crime scene, in the framework of guiding principles this activity is featured with, the classical investigating methods of scientific premises as well as the theoretical and jurisprudential of criminal matters basis have been taken into consideration.

In this matter, both theoretical and scientific bases were focused upon referential doctrine, which discusses the elements of guiding principles of crime scene investigation.

Jurisprudentially speaking, the home practice in criminal matters is accustomed to the penal cases which are investigated during the investigation phase of penal proceedings in which no less than one procedural act of investigation of crime scene has been carried out. In this regard, a discussion on the jurisprudential topic is necessary.

Thus, the current study is a doctrinal one, which contains elements of jurisprudence gathered from penal cases whose judicial decisions have been pronounced by the courts of law of Romania. Nevertheless, certain comparative elements have the main role in highlighting the research study through the newer concepts they advance in the matter of solving penal cases by acts of forensic crime scene investigation.

Last but not least, it must be pointed out that the methodology of researching the current paper did not taken into account aspects of empirical research and the obtained results do not generate data and do use data neither from judicial authorities and investigation bodies including the forensic ones.

2. General overview of guiding principles

In carrying out the objectives of forensic investigation, basic principles leading to the judicial bodies in criminal matters during the crimes scene investigation are circumstantial.

Before discussing these principles, certain remarks regarding the notion of crime scene investigation, in particular that of "crime scene" are essential. Most of times, the expression "crime scene investigation" is used in practice in accordance with the provisions of Code of penal procedure which define the legal framework in this matter [3].

The guiding principles, which characterize the activity of crime scene investigation must be viewed in conformity with its procedural stage. It is about the preparatory acts, static investigation and dynamical investigation. Regarding the first and the second stages earlier mentioned, particular discussions are not necessary, due to the fact that the last stage of investigation basically involving the dynamical investigation, interests the study [4]. It is appreciated that, at this stage, the scope of forensic investigation of crime scene is achieved. It consists in discovering, fixing, preserving and carrying up the offenses traces in order for the forensic bodies to examine them and obtain evidence.

Beside the principle of finding truth and solving penal cases legally and substantially, as general ones which characterize the penal proceedings entirely, the forensic science has configured certain own principles whose infringing will conduct to failing the activity of crime scene investigation. It is about the principle of efficiency, the principle of fairness, the principle of opportunity and the principle of rapidity.

Even they are not expressly regulated by the Code of penal procedure, with particular reference to the activity of crime scene investigation, the guiding principles are the result of the legal framework which regulates judicial activity in criminal matters and are then used during the criminal proceedings [5].

The activity of the crime scene investigation and its efficiency is linked to the principle of solving penal cases in a reasonable time [6] as well as to the principle of rapidity. However, the principle of efficiency refers to the technical modality of carrying out procedural activities [7]. From this point of view, it is appreciated that the principle of efficiency states the manner in which the forensic investigator applies in practice the knowledge gathered during this activity as well as the manner in which it practices such knowledge.

Moreover, doctrine has appreciated that this principle *"(...) is extended over the laboratory examinations carried out in order to identify the objects (...). The laboratory examination must be carried out with maximum of efficiency because the traces and materials are then subject to continuous modifications which minimize their value of identification"* [8].

On the other hand, the principle of efficiency characterizes the activity of crime scene investigation [9], that has as the main purpose of finding truth in the investigated penal cases. *Per a contrario*, missing efficiency of criminal proceedings during the crime scene investigation concludes in violation of finding truth in penal cases. For this reason, the forensic investigator has the obligation to analyse situation as it results from the entirely evidence gathered from the crime scene. At the same time, it must provide the results objectively and states in the judicial record of crime scene investigation that he finds out, without falsifying truth.

Last but not least, the principle of efficiency configures the penal proceedings from the beginning. More specifically, once the investigation phase has been started, the judicial mechanisms and instruments of gathering evidence in order to discover all crimes committed and the circumstances they were committed in as well as to identify the perpetrators in order for them to undergo the criminal prosecution are activated [10]. In accordance with this principle, the forensic investigators are looking for analyzing technical and scientific all traces found on the crime scene, the patterns sampled in order to be examined as well, in such a manner to avoid their erroneous interpretation. As a consequence, respecting the principle of fairness during the activity of crime scene investigation will conclude in removing the would be suspicions of the judicial bodies in the procedure of administering evidence.

The rapidity of crime scene investigation is reflected upon the way in which the Code of penal procedure regulates the judicial bodies' activity of solving penal cases, as follows: *"the judicial bodies have the obligation of carrying out the investigation and judgment activities in respecting the parties' procedural guarantees and rights ..., such as to ascertain promptly and completely the crimes, no innocent person to be condemned illegal, and guilt ones of having committed crimes to be punished in accordance with the penal law, in a reasonable time"* [11].

3. The technique of crime scene investigation

Forensic investigation techniques are concordant with science of progress, especially with those achieved in the field of sciences, such as physics and chemistry. Developing modern techniques of investigation of penal cases is the result of a cumulative factors which have had a significant influence over the justice in criminal matters [12]. It is about the innovating scientific methods and techniques which help forensic investigator in clarifying all circumstances the crime was committed in. They will conclude then in solving penal cases legally and substantially, based on conclusive, pertinent and genuine evidence [13].

In cases of serious crimes, such as those of homicide with unidentified corpse, the aspects of crime scene investigation involve some difficult problems for the forensic investigators appointed in the penal cases to carry out this activity. In these cases, it is possible that the judicial bodies would have as purpose the identification of putrefied or distorted corpse or they find only parts from a corpse which belong to the homicide victim. In conformity with these situations, certain working hypotheses are outlined which have basically the following direction lines: (1) Firstly, the situations are produced either through passing a long

time period from committing homicide till finding corpse, also called by doctrine "post-mortem period" [14]. (2) Secondly, the above presented situation can also indicate a corpse engorged by animals. (3) Finally, another hypothesis is outlined around the idea that the human corpse parts have been carved by perpetrator, the action carried out after committing homicide in purpose to hide the crime traces and victim's identification implicitly.

The entire aspects create a large action area for the forensic investigation bodies in their endeavour to identify the homicide victim's corpse. Doctrine has appreciated that the perpetrator would use diverse corpse sectioning methods in order to hide the homicide traces and aggravate the forensic investigators' activity, especially that of identifying victim. Considering all these points of view, a difficult particular case of investigation is that related to a corpse discovered which has cutting wound, even there is no blood surrounding [15]. This case indicates that the homicide was committed in another place that the corpse was found in.

It is obvious that using aggressive methods of *modus operandi* by perpetrators, the scientific technique responds with more efficient investigative mechanisms and instruments, even if the main scope of judicial activity in criminal matters is that of preventing and combating criminal phenomena.

In cases of complex crimes, as the cases of homicide with unidentified corpse are, mixed teams of investigators are present on the crime scene belonging to different scientific areas, such as the forensic medic, in accordance with Article 194 Code of penal procedure, which regulates that "*The investigation bodies or the court of law can order the forensic medic or another person's presence whose presence is considered necessary*". As a rule, alongside forensic medic, the investigation team will be composed by anthropologist, archeologist, osteologist, odontologist experts, who will state, in accordance with their specialization, the bones origin, and examine them in order to provide the victim's data. The data will then offer information regarding the victim's age, gender and waist.

At the same time, in cases of calcined bones, the osteologist forensic expert will establish all these information in accordance with the bones degree of calcination.

Finally, the odontologist expert will examine the victim's teeth and the intending dental works and will conclude the victim's data and its identification [16].

Taking into account the elements stated above, certain guiding principles as general rules available in the penal cases are concluded. They refer to the following:

- the principle of inter-disciplinarity in activity of crime scene investigation of forensic bodies [17];
- the principle of indispensability the activity of crime scene investigation;
- the principle of methodical organization of crime scene investigation activity;
- the principle of using technical-scientific forensic means of investigation [18];
- the principle of responsibility in carrying out the activity of crime scene investigation.

4. The importance of crime traces

As it has been pointed out during the previous sections, the crime traces role that could be used by the forensic investigators on the crime scene is a substantive one. They can be irrefutable evidence both from the perpetrator's *modus operandi* point of view [19], and the idea of finding truth in the penal cases point of view, in purpose to pronounce a legal judicial decision.

In the penal cases of homicide with unidentified corpse, the procedure of crime scene investigation including the scientific methods and techniques allow the judicial bodies to discover the crimes traces, whose examinations will conclude in scientific evidence [20]. Indifferent of the complexity of penal cases, it is well-known that the crime scene is full of evidence [21] and for this reason the judicial bodies' proficiency is very important in discovering them and carrying out the subsequent investigative activities, consisting in fixing, preserving and examining them through the samples sent to laboratory.

Doctrine has highlighted that the crime traces are "*all that has remained materially, visible or invisible, on the crime scene from perpetrator, his clothes or footwear, from vehicles, weapons, instruments or materials he used, goods or part of goods of any kinds, abandoned or lost by perpetrator on the crime*

scene, as well as all that was attached materially, visible or invisible, from the crime scene over the perpetrator” [22].

The importance of studying the routing - the science of crimes traces - is relevant for the forensic tactics of carrying out the crime scene investigation. The aspects of forensic tactics involve the fulfillment of standardized activities by the forensic investigators.

Chronologically speaking, once they have arrived at the crime scene, the forensic investigators will have in view firstly the victim in purpose to assure it the first aid if it is still alive. However, if the victim is not alive, then the particular procedure will be applied.

From the forensic tactics point of view too, it is recommended that a judicial psychologist could be part of the investigation team, in cases investigated in which the suspect is present in procedure of crime scene investigation. It is considered that the judicial psychologist is able to perceive and analyse the suspect's behaviour which will conclude in formulating pertinent points of view regarding the manner in which he acted in committing crime as well as other aspects that only a psychologist may find out and provide the judicial bodies with. This concept is implemented in the justice in criminal matters in the United States of America, and it is called forensic profiling [23], a judicial technique used in the procedure of identifying the suspect's criminal behaviour in cases of serial homicide [24].

The tactics of carrying out the crime scene investigation involve also the procedure used by forensic investigators in preserving the crime traces sampled from the crime scene, due to the fact that the weather adversities or other factors, such as physical or mechanical ones, can change or even destroy them. The efficiency of preserving the crime traces creates the essential premise of gathering scientific evidence that could conduct to finding the truth in the penal case.

Finally, the forensic investigators are looking in identifying the eye-witnesses from the people participating in these activities [25], whose depositions are useful evidence the judicial bodies will administer during the criminal proceedings. Identifying perpetrator is one of the main proposed objectives of the forensic investigators came at the crime scene.

Conclusions

The research conducted on the topic presented in the current paper concludes that the forensic science has been enhanced in the last decades, while the scientific progress facilitates the forensic techniques and methods of investigation [26].

Carrying out the activity of the crime scene investigation means an efficient procedural tool for the activity of judicial bodies invested in penal cases with discovering, fixing, preserving, and examining the crimes traces in order to gather pertinent, conclusive and genuine evidence.

The entire procedural acts suppose a standardized activity. It is however conducted chronologically, in such a way for the forensic bodies to discover and analyse all circumstances the crime was committed in.

One of the most important objectives, the forensic investigators take into account while they carry out the crime scene investigation, is that of establishing possible modifications that have been occurred on the crime scene [27] as well as to establish the factor which has determined such modifications.

In conclusion, it is obvious that the forensic investigation team must be invested with appropriate competences and they have to make huge efforts in purpose to clear up controversial issues that may arise during the crime scene investigation and that aggravate this activity. They are called by doctrine as negative circumstance. From this perspective, it is pointed out that *”Identifying and clarifying all negative circumstances present importance in drawing up the versions of investigation activity ...”* [28].

References

- [1] H. R. Smith, *The federal ”Crime of violence” definition: Overview and judicial developments*, Congressional Research Service, 2018, available online at: www.crs.gov
- [2] F. Ionescu, *Criminalistica*, Universitară Publishing House, Bucharest, 2007, p. 20.

- [3] In accordance with Article 192, Article 194 and Article 195 Code of penal procedure.
- [4] Penal Sentence no. 100 of 2016 of the Gorj Court of Law, in D. Magherescu, *Criminalistică*, Wolters Kluwer Publishing House, Bucharest, 2017, pp. 297-299.
- [5] Penal Decision no. 107/RC of 2019 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=150820>
- [6] Giulio Ubertis, *Verso un "giusto processo" penale*, G. Giappichelli Editore, Torino, 1997, pp. 51-54
- [7] *Ibidem*.
- [8] F. Ionescu, *Criminalistica*, Universitară Publishing House, Bucharest, 2007, p. 20.
- [9] Regulated by Article 177 (3) Code of penal procedure.
- [10] Penal Decision no. 76 of 2017 of the Maramureş Court of Law, available online at: <http://portal.just.ro/100/Lists/Jurisprudenta/DispForm.aspx?ID=423>
- [11] The principle of solving penal cases in a reasonable time is regulated by Article 8 Code of penal procedure.
- [12] D. Magherescu, *Criminalistică*, Wolters Kluwer Publishing House, Bucharest, 2017, pp. 116-130.
- [13] M. Chiavario, M. Delmas-Marty, *Procedure penali d'Europa*, Cedam, Padova, 2001, p. 511.
- [14] J. W. Berketa, *Maximizing postmortem oral-facial data to assist identification following severe incineration*, Forensic Science, Medicine, and Pathology, no. 2/2014, pp. 208-216.
- [15] J. E. Douglas, A. W. Burgess, A. G. Burgess, R. K. Ressler, *Crime classification manual. A standard system for investigating and classifying violent crimes*, 3rd Ed., Wiley, New Jersey, 2013, pp. 8-11.
- [16] N. N. Singh, O. Gowhar, et al., *Exploring trends in forensic odontology*, Journal of Clinical and Diagnostic Research, no. 8/2014, pp. 28-30.
- [17] F. Ventura, F. Portunato, E. Pizzorno et al., *The need for an interdisciplinary approach in forensic sciences: Perspectives from a peculiar case of Mummification*, Journal of Forensic Sciences, no. 3/2013, pp. 831-836.
- [18] N. Niță, *Tactica criminalistică*, Pro Universitaria Publishing House, Bucharest, 2017, p. 37.
- [19] V. Mastronardi, G. Neri, *Serial murders: criminological profiles*, Rivista di Psicopatologia Forense, Medicina Legale, Criminologia, no. 22/2017, pp. 22-26.
- [20] E. Murphy, *Forensic Evidence*, in E. Luna, *Reforming criminal justice*, vol. 3, Arizona State University, 2017, pp. 171-192.
- [21] E. Stancu, *Tratat de criminalistică*, Actami Publishing House, Bucharest, 2001, p. 50.
- [22] M.G. Stoian, E. Galan, *Relația microurmă/ întreg stabilită prin metode spectrometrice moderne și formularea concluziei expertizelor fizico-chimice criminalistice*, available online at: http://old.mpublic.ro/jurisprudenta/publicatii/relatia_microuurma_intreg.pdf
- [23] L. Winerman, *Criminal profiling: The reality behind the myth*, Monitor on Psychology, no. 35(7)/2004, pp. 66-69.
- [24] C. van Aken, *The use of criminal profilers in the prosecution of serial killers*, Themis: Research Journal of Justice Studies and Forensic Science, vol. 3/2015, pp. 127-148; C. K. Lubaszka, P. C. Shon, R. Hinch, *Healthcare serial killers as confidence men*, Journal of Investigative Psychology and Offender Profiling, no. 11/2014, pp. 1-28.
- [25] D. Magherescu, *op. cit.*, p. 67.
- [26] J. Mnookin, S. A. Cole, I. E. Dror et al., *The need for a research culture in the forensic sciences*, UCLA Law Review, no. 3/2011, pp. 764-773.
- [27] E. Stancu, *op. cit.*, p. 50.
- [28] P. Ciobanu, *Mijloace tehnico-științifice destinate investigațiilor criminalistice la fața locului*, Universul Juridic Review, no. 6/2017, pp. 137-138.