

# CRIMINALISTIC STRATEGY AND TRENDS IN CRIMINALISTICS

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**Abstract:** The paper is devoted to the problems of criminalistic strategy and trends of criminalistics. These problems are decided by analysing criminal policy in connection with criminal law, penitentiary, criminal procedural, criminological policies and criminalistic strategy. The concept of criminalistic strategy is formulated as a field of knowledge connected with counteraction to the crime with the help of criminalistic means in the long term. The authors also paid special attention to the functions of criminalistics in different ways: 1) the function of science development (scientific); 2) the function of ensuring practice (investigative, prosecutorial, judicial, lawyer) (practical). The functions of criminalistics are differentiated depending on their focus: 1) cognitive; 2) prognostic; 3) educational (or didactic); 4) preventive.

As a result of this research the authors have formulated some trends in criminalistics: 1) criminalistics started to support not only investigators and prosecutors by criminalistic means, but judges, barristers and other participants of judicial proceeding, as well; 2) criminalistics has to turn from studying the traditional materially recorded traces to the investigation into sonic (acoustic), electronic and genome ones; 3) expansion of the criminalistics limits.

**Keywords:** criminal policy, criminalistics, criminalistic strategy, function of criminalistics, trend in criminalistics.

## INTRODUCTION

The formulation of criminal policy is affected by the political vector and international position of the state, maturity of civil society, conditions for the commission of crimes, intellectual, technical, tactical, methodical and legal possibilities of representatives of criminal justice agencies to counteract crime, the availability of qualified specialists in the sphere of combating crime, volition of representatives of criminal justice agencies to counteract crime, understanding of the objectives of the criminal justice agencies and the purposes of punishment. These factors also explain why there are different approaches to the formulation of criminal policy in different countries and historic periods. Because of this idea, we started to find connections between criminal policy and criminalistic strategy, and among criminalistic strategy, function and trends of criminalistics.

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## CRIMINALISTIC STRATEGY AND CRIMINAL POLICY

Anselm von Feuerbach (1775-1833) was the first scientist to use the term “criminal policy”<sup>3</sup>. He understands it as a branch of science, which should give the criminal legislator guidelines for better organization of the matter of justice. A similar definition was suggested by Franz von Liszt (1851-1919) – a systematic complex of reasons, based on scientific research into the causes of crime and the effects produced by the punishment – grounds, in accordance with which the State should deal with crime by means of punishment and related institutions. Therewith he clarifies his position by stating that science-based criminal policy requires that criminal biology (anthropology) and criminal sociology (statistics) data should be taken as a basis for it. This approach turns criminal policy into a “broad” inter-branch and interdisciplinary concept for criminal law sciences, criminal procedure, criminalistics and other related sciences<sup>4</sup>.

Currently, criminal policy can be defined as the sphere of knowledge, based on the study of the causes and effects of crime, aiming at strategic crime prevention by means of social and political impact on the reforming of criminal justice system in the long term. For criminal policy it is important not only to set strategic goals, but also to draw conclusions as for reaching them.

Criminal policy formulates strategic objectives for the sciences of criminal justice and differs in the following areas: 1) criminal law policy; 2) penitentiary policy; 3) criminal procedural policy; 4) criminological policy; 5) criminalistic strategy.

Criminal law policy should solve the problems of formulating the tasks of criminal law; principles of criminal law; strategy of its variability; the number of penalty types and their understanding; the purpose of punishment, exemption from criminal liability, punishment and enduring it. The primary objective of the criminal law policy is a strategic, long-term impact on the criminal law through the accurate knowledge of the cause and effect of the crime.

Criminal law policy can formulate the problems of the Criminal Code, the basis of criminal liability, the formation of general criminal law principles (for example, *non bis in idem*; *omnis indemnatus pro innoxio legibus habetur*), the purpose of punishment, etc. This is why criminal law policy cannot exceed the bounds of formulating strategic prospects of legal groundwork, which of course considerably narrows the criminal policy in comparison with the concept of criminal policy. Criminal law policy is also influenced by international treaties, conventions, strategic development of the state.

The penitentiary policy of the state is also connected with the realization of laws and by-laws in this sphere. It is realized by means of creating conditions for correction and resocialization of convicts, the prevention of the commission of new criminal offences both by convicts and by other persons and also the prevention of tortures and inhuman or humiliating treatment of convicts. Cesare Lombroso (1835-1909) points out that criminals should be treated in conformity with individuality of each of them and his/her character should be taken into account if they want to achieve any satisfactory results<sup>5</sup>. The joint of the criminal law and penitentiary policies is important because the criminal law policy forms purposes

3 Чубинский М. П. Очерки уголовной политики: понятие, история и основные проблемы уголовной политики как основного элемента науки уголовного права. – Москва: ИНФРА-М, 2010, XII, p. 55-56

4 фон Лист Ф. Задачи уголовной политики, в изложении Бориса Гурвича. – СПб.: Типо-Литография К. Л. Пентковского, Екатерин. кан., уг. Казнач., 6-71, 1895, p. 2

5 Ломброзо Ч. Новейшие успехи науки о преступлении // Преступный человек / Пер. с итальянского. – Москва: Эксмо; Санкт-Петербург: Мидгард, 2005, pp. 219

of the punishment which influence the formation of the purpose of the whole penitentiary legislation.

The problems of criminological policy are also of some interest for researchers. Anatoly Zakalyuk (1930-2010) singled out the tasks which are set with respect to this science and the ways for their realization<sup>6</sup>. One of such vectors was the development of the modern strategy of counteraction, first of all, to organized, economic, corruption-related crime, crime connected with illicit drug trafficking and violent crime, including contract, acquisitive and violent and acquisitive crime and also among persons who were previously convicted and among minors. Taking into account these tasks which are set with respect to criminology, one can assert the presence of the common vector for the criminal law sciences, the common purposes and tasks and also the strategy of counteraction to crime. In other words, in the context of the criminal policy, one can also speak of the criminological policy (strategy).

The information about the contents of the criminal procedure policy can be found in the provisions of the Criminal Procedure Code concerning the tasks of criminal proceedings, the principles of criminal proceedings, etc. They include the protection of a person, the society and the state from criminal offences, the protection of rights, liberties and legal interests of the participants of criminal proceedings and also ensuring a quick, comprehensive and unbiased investigation and judicial examination so that each person who committed a criminal offence could be brought to responsibility within the scope of his/her guilt, no innocent person could be accused or convicted, no person could be subject to ungrounded procedural compulsion, so that a proper legal procedure is applied to each participant of the criminal proceedings. The presence of a real mechanism connected with the achievement of a goal and the supervision of the bodies of criminal justice is crucially important for the successful realization of the criminal procedure policy.

The interest in the strategy has increased greatly in criminalistics in the XXI century. The newly published works with respect to this problem (O. Bayev<sup>7</sup>, R. Belkin<sup>8</sup>, V. Bernaz<sup>9</sup>, H. Malevski<sup>10</sup>, M. Shepitko<sup>11</sup>) are worthy of attention. According to H. Malevski, the existing approaches to the place of the criminalistic strategy in criminalistics differ: 1) a certain instrument which shows tendencies and directions of the development of the science; 2) an independent part of the science; 3) a certain model or program of the investigation of a certain crime<sup>12</sup>.

6 Закалюк А. П. Курс Сучасної української кримінології: теорія і практика: У 3 кн. – Кн. 1: Теоретичні засади та історія української кримінологічної науки. – Київ: Ін Юре, 2007, pp. 34-35

7 Баев О. Я., Баев М. О. О конечных целях деятельности участников уголовного судопроизводства и стратегиях их достижения (к проблеме криминалистической стратегии) // Криминалист первопечатный. – 2012, № 4, pp. 8-18

8 Белкин Р. С. Криминалистика: проблемы сегодняшнего дня. Злободневные вопросы российской криминалистики. – Москва: Норма, 2001, pp. 78-80

9 Берназ В. Д. Криминалистическая стратегия в расследовании преступлений // материалы межд. науч.-практ. конф. «Криминалистика XXI века». – Харьков: Право, 2010, pp. 203-209

10 Малевски Г. Криминалистическая стратегия, стратегия в криминалистике или стратегия криминалистической политики? // материалы IX межд. науч.-практ. конф. «Криминалистика и судебная экспертиза: наука, обучение, практика». – Вильнюс, Харьков, 2013, pp. 17-31; Малевски Г. Проблема соотношения понятий тактики и стратегии в криминалистике и деятельности правоохранительных органов // Криминалист первопечатный. 2014, № 9, pp. 99-120

11 Шепитько М. Место криминалистической стратегии в связи с изменчивостью понимания уголовной политики // Криминалистика и судебная экспертиза: наука, обучение, практика. – Х.: Сб. науч. трудов в 2-х т. – Харьков: Видавничка агенція «Апостіль», 2014, Т. 1, pp. 154-164

12 Малевски Г. Криминалистическая стратегия, стратегия в криминалистике или стратегия криминалистической политики? // материалы IX межд. науч.-практ. конф. «Криминалистика и судебная экспертиза: наука, обучение, практика». – Вильнюс, Харьков, 2013, p. 31

At present the criminalistic strategy has been already formed as a category and a separate direction. The development of the criminalistic strategy as a separate category in criminalistics has not reached the level of a separate branch of the science. The criminalistic strategy cannot be realized in the investigation of a certain crime either as it contradicts the realization of the criminal policy of the state. That is why the criminalistic strategy is the field of knowledge connected with counteraction to the crime with the help of criminalistic means in the long term.

## FUNCTIONS OF CRIMINALISTICS

Criminalistics in realization of its strategy can be considered in three aspects: as a science, as a taught course and a practical activity in the fight against crime. Traditionally, criminalistics serves the purposes of disclosure, investigation, legal proceedings and prevention of crimes.

Every crime should be promptly and fully solved. To solve the crime means to identify all its features and the offender. A crime can be solved by means of activities based on scientific methods, techniques and procedures of criminalistics. The solution and investigation of crimes involves the use of scientific and technical means, technical and tactical methods, and methodological recommendations.

Judicial proceedings are also not possible without the use of criminalistic expertise (knowledge). Tactical techniques of court proceedings, application of scientific and technical means (such as audio and video recording, videoconferencing), guidelines for considering certain categories of cases are required in court. It is actually about judicial criminalistics or criminalistics of judicial activities.

Hans Gross (1847-1915) considered criminalistics accessory in relation to criminal law and defined it as the study of realities of criminal law. According to the "father of criminalistics", the essence of the new science consists of: 1) revealing the truth in every criminal case (practical aspect); 2) the study of the criminal and the criminal offense (theoretical aspect)<sup>13</sup>.

Criminalistics is continuously expanding the object of its research. Criminalistic expertise (knowledge) is useful not only for investigative activities, but also for forensic intelligence, prosecutorial, judicial, lawyer, experts activities. Therefore, the functional orientation of criminalistics and its means is important for various types of legal activities.

Criminalistics as a science performs important functions: 1) the function of science development (scientific); 2) the function of ensuring practice (investigative, prosecutorial, judicial, lawyer) (practical). These functions are related to each other and are interdependent, reflecting the unity of theory and practice.

The functions of criminalistics can also be differentiated depending on their focus. In this respect, it is expedient to distinguish between the following functions: 1) cognitive; 2) prognostic; 3) educational (or didactic); 4) preventive.

The cognitive function lies in the fact that its methods and means promote knowledge, insight into the unknown. Criminalistic expertise (knowledge) is aimed at obtaining objective information, identifying certain patterns and relationships. Knowledge is acquired in scientific and practical directions. The cognitive function of criminalistics is carried out in the context of activities of various subjects, applying criminalistic expertise (knowledge). The

13 H. Gross's views on the content of forensic science are described in his works on the problems of crime disclosure (See: Гросс Г. Руководство для судебных следователей как система криминалистики. Новое изд., перепеч. и изд. 1908 г. – Москва: ЛексЭст, 2002, р. 1088)

pragmatic side of cognitive function of criminalistics shows in investigative, judicial, prosecutorial activities and advocacy.

The prognostic function of criminalistics promotes making projections, models, long-term planning of activities, development of its strategy and tactics. The prognostic function can be also carried out in the context of scientific research, analysis of the trends of scientific advancement, general and sub theories.

The educational (didactic) function of criminalistics focuses on academic aspects, the problems of studying criminalistics. Educational (didactic) function supplies the content for the learning process, provides learning with the educational product, and offers the best forms and methods of teaching criminalistics. The target audience of criminalistic knowledge is prospective lawyers, practicing professionals in the process of retraining and professional development. The educational (didactic) function of criminalistics is to provide lawyers depending on the lawyer's specialization and his/ her future profession (investigator, prosecutor, notary, legal counsel, judge, lawyer, etc.) with criminalistic knowledge of different range.

The preventive function of criminalistics is to prevent crimes or reduce their number. The aim of criminalistics is to prevent crimes. But this area is in some sense limited. Many sciences that comprise the criminal law cycle contribute to the prevention of crimes. Criminalistics facilitates the development of special preventive measures (mainly technical) (for example, improving locking devices, alarm systems, creation of special paper (or protective nets) for documents and etc).

## TRENDS IN CRIMINALISTICS

Research of criminalistic strategy and formulation of criminalistics functions pay attention to the trends in criminalistics development. The criminalistics trends are mainly dependant on the methodological grounds thereof. The criminalistics methodology is in need of new researches. The role of the methodology lies in counteracting the emergence of criminalistic "phantoms", anti-scholar concepts and theories, false ways for the development of the science. Recently the emphasis has been on the potentials of applying new (non-conventional) methods. They suggest using astrology, palmistry, kinesics, criminalistic hypnology, etc. The said offers provide for no scientific ground, they contradict the positive development of criminalistics, distract the attention from the topical problems of nowadays.

The contemporary advance of criminalistics is featured by the formation of the general theory thereof, elaboration and implementation of modern scientific and technical facilities and information technologies into the crime fighting practice, improvement of the criminalistic tactical techniques and proposals of individual methods to inquire into the new types of crime.

The criminalistic knowledge in criminal proceedings is used at various stages of the process. This problem becomes even more acute as it is crucial to harmonize the procedural criminal mechanism in regard to the International and European standards, to introduce adversary principle, to provide the due balance of public and private interests. The specialized scientific sources provide for an active discussion of the "judicial criminalistics", "judicial proceedings criminalistics", "tactics and methods of judicial investigation". Currently we face dramatic discussions of the "criminalistic attorney studies", "criminalistic provision for the prosecutor's activity", "criminalistic constituent of the court". Various approaches to the solution of the problem of the application "criminalistic knowledge in court" indicate the fairness

of the point on attributing the regularities of “trial examination of crimes” to the subject of criminalistics”<sup>14</sup>.

The reform of the criminal justice authorities is intended to change their structure and functional orientation with the purpose to augment the efficiency and quality of their activity. Critical changes refer not only to the organizational work of court and prosecution offices, but also to the pretrial investigation bodies. Alongside, there are controversial (and even colliding) proposals to centralize the pretrial investigation bodies (for instance, through the formation of the respective investigation committee) or further to have a complete refusal from the pretrial investigation institution and to assign some of its functions to another stage of the process, i.e. the court one. The democratization of the criminal court proceeding is also connected with a drive for transformation of the pretrial investigation authorities and implementation of adversary principles, reasoning of the necessity to let the conflicting social structure “prosecution-defence” exist. The role of the self-dependent and procedurally independent investigator who performs the major function of collecting and recording evidence (crime investigation function) is materially restricted by the procedural mechanisms (court control, criminal indictment on the part of the prosecutor, etc.). Under such conditions, the subjects applying the criminalistic knowledge shall be altered as well. The solution of reformation problems should provide replies to the questions: Who is the subject of collecting and recording the evidence? What are the ways to achieve the goal in the settlement of the criminal legal conflict? Which means can be used for this purpose? Will the changes facilitate the efficiency of the crime detection and investigation, court proceedings on a criminal case, and finally lead to the settlement of the conflict and restoration of justice?

The problem of specifying the goal and ultimate result of investigation, inspiration to *ascertainment of truth* in a case is currently under discussion. There are opinions that negate the opportunity to ascertain the impartial truth in a criminal proceeding or propose to replace it with another category: the formal truth (procedural, judicial and inquiry ones). Such opinions are erroneous from the methodological point of view.

Truth in a criminal process may not be probabilistic or be restricted by the type or subject of activity. The impartial truth shall be ascertained as a result of an investigation or court proceeding, otherwise the inquiry activity will become ill-defined.

Elimination of the truth from the goals of the criminal process will indeed affect the essence of criminalistics as it is. The point at issue is which regularities will be studied by criminalistics then? Criminalistics is designed through its provisions to facilitate the activity of law enforcement agencies on the ascertainment of the truth.

Reformation of the pretrial investigation authorities shall be scientifically grounded, systemic and well-scaled. It is far from admissible to make non-pondered or chaotic steps and doubtful offers to change the procedural criminal area. One may not “break” the foundations without knowing the things to place instead and the consequences that such “breaking” will give a rise to. The modification of the procedure will cause the changes of criminalistics means too. Such reforms must impartially show the existing situation and actual opportunities to put such changes into practical activity of the investigator or other subjects.

Variance of criminalistic knowledge is in the first line connected with the scientific and technical progress of the modern society. Informational support of the social environment has led to “technological support” for criminalistics, development and implementation of information, digital, telecommunication technologies. Information technologies are the new category of criminalistics purporting to stand on a due place in its structure. The technolog-

14 Белкин Р. С. Курс криминалистики в 3-х т. Т. 1: Общая теория криминалистики. – Москва: Юристъ, 1997, р. 84, 147

ical approach is used not only in the criminalistic engineering, but also in criminalistic tactics and methods (technology to make specific investigation actions, inquiry or criminalistic technologies).

## CONCLUSION

Under the new conditions, criminalistics has to turn from studying the traditional materially recorded traces to the investigation into sonic (acoustic), electronic and genome ones. Furthermore, the methods, ways and approaches to work with such traces and the procedure of collecting and recording them are being changed. In modern conditions, revolutionary scientific and technological changes lead to the fact that the established criminalistic methods are not satisfying any more. From discussing the need for universal fingerprinting we turn to the need for adoption of a special law "On Fingerprinting" to offering the new biometric methods of identification: DNA fingerprinting registration, identification by iris or retina of the eye, venous map scan method, video-computer recognition of man by the image of his face, etc. Objective reasons for the development of science and technology lead to the formation of new areas in criminalistic technology: criminalistic study of explosives, forensic acoustics or criminalistic phonoscopy, polygraph examination, criminalistic engraving examination.

Thus, the expansion of the criminalistics limits is an objective process. Alongside, one may not have a mechanical transfer of criminalistic guidelines, approaches and methods as offered for crime investigations into other areas. The contemporary tasks of criminalistics are specified through new conditions for the society development, a new phase of the science and engineering development.

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*Beograd, 7-9. novembar 2017.*

*Belgrade, 7-9 November 2017*

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MEĐUNARODNOG ZNAČAJA**

**THEMATIC CONFERENCE PROCEEDINGS  
OF INTERNATIONAL SIGNIFICANCE**

**TOM I  
VOLUME I**

Kriminalističko-policijska akademija  
Beograd, 2017  
Academy of Criminalistic and Police Studies  
Belgrade, 2017

CIP – Каталогизација у публикацији  
Народна библиотека Србије, Београд

343.85(082)

343.9(082)

351.86(082)

**INTERNATIONAL Scientific Conference "Archibald Reiss Days" (2017; Beograd)**

Thematic Conference Proceedings of International Significance. Vol. 1 /  
International Scientific Conference "Archibald Reiss Days", Belgrade, 7-9 November  
2017 ; [editor-in-chief Biljana Simeunović-Patić] = Tematski zbornik radova  
međunarodnog značaja. Tom 1 / Međunarodni naučni skup "Dani Arčibalda Rajsa",  
Beograd, 7-9. novembar 2017. ; [glavni i odgovorni urednik Biljana Simeunović-Patić]. -  
Belgrade : Academy of Criminalistic and Police Studies = Beograd : Kriminalističko-  
policijska akademija, 2017 (Čačak : Univerzal). - XII, 495 str. : ilustr. ; 24 cm

Tiraž 200. - Preface: str. VIII. - Napomene i bibliografske reference uz tekst. -  
Bibliografija uz svaki rad.

ISBN 978-86-7020-378-5

ISBN 978-86-7020-190-3 (niz)

a) Криминалитет - Сузбијање - Зборници b) Криминалистика - Зборници

c) Сектор безбедности - Зборници

COBISS.SR-ID 249244684