

Problems and Ways of Development of Modern Russian Criminalistics

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This article deals with the main directions of development of Russia's forensics and theory of criminalistics from the beginning of the 21st century. A social revolution in Russia occurred in the early 1990's, and the new Constitution declared Russia to be a state of law and justice, and proclaimed the rule of law and the priority of human rights and freedom. According to these proclaimed priorities, massive judicial and legal reforms were instituted, and are still lasting. Russia began progressing from the investigating type of criminal procedure to a more controversial one. The changes that took place in the home and foreign policy have had a great influence upon the contemporary Russian criminalistics as well. The adaptation to new conditions of legal reality became a main task of Russian criminalistics in the last few years. The article discusses the modification of Russian criminalistics (both forensic and scientific researches).

Keywords: criminal investigation, trial, criminalistics, forensic, controversiality, new tactics of criminalistics

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1 Introduction

Slightly more than a century ago Alphonse Bertillon worked out the first scientific method of personal identification for the needs of police investigation. This event marked the birth of a system of scientific knowledge in the field of criminal investigation which had been summarized by Hans Gross, Austrian scientist and examining magistrate, in his *Handbook for Coroners* (Gross, 1910).

A hundred years passed since a complete Russian translation of the 4-th German edition of this work had been published. During this period, Russian criminalistics rose from an applied technical discipline called »police technique«, »scientific police«, or »criminal technology«, to the position of a full-fledged juridical science with its own specific, unique subject matter.

Views and opinions concerning the subject matter of this science transformed the development of criminalistics, as well as trends and directions of studies.

2 Reformation of the rules of the criminal procedure in Russia

A social revolution in Russia occurred in the beginning of the 1990's, and the new Constitution declared Russia to be a

state of law and justice, and proclaimed the rule of law and the priority of human rights and freedoms.

According to these proclaimed priorities, massive judicial and legal reforms were started and remain till this day. Russia began progressing from the investigating type of criminal procedure to a more controversial one.

The new Criminal Code (1996) and Code of Criminal Procedure (2001) were adopted, and law-enforcement departments were subject to substantial changes. The separate independent Committee of Inquiry was established, and militia and prosecutors' offices were reorganized. The court has experienced some important changes as well, with legal proceedings carried out on the basis of competitiveness and equality of the sides to the trial.

3 The changes of law lead to the changes in practice of criminalistics

The changes that took place in the country greatly influenced Russian criminalistics as well. The adaptation to new conditions of judicial reality has become the primary task of Russian criminalistics in recent years (Korshunova & Serova, 2004).

During this transformation the main direction of improving criminal procedure consisted of the formation of guarantees of impartiality of judges, getting over their accusatory inclination, realisation of the activity of the prosecution and

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the defence in the trial, and the introduction of competition into the criminal proceedings during all stages of the process.

However, the activity of only one side without another in criminal cases cannot be considered legal, and controversy necessarily assumes opposition. Opposition to the prosecution at all stages of the proceedings is the objectively existing process, always accompanying the criminal investigation.

If this thesis is presumed correct, then we will have to accept the fact that selecting and researching only one side – for example, the activities of detective or public prosecutor (as representatives of the side of prosecution) – without paying attention to the existing and activity of the opposite side (the defence), is none other than the profanation of the cognitive process.

If opposition is a necessary attribute to accompany the criminal investigation after investigating by each party themselves, it is necessary to integrate the acquired knowledge. On this basis, it is necessary to continue the study of evidence in the interaction with each other. Only then can one understand the objective reality of criminal justice, and work out the best practical recommendations for consideration of criminal cases (Gustov, 2004).

Not long ago Russian criminologists came to the conclusion that forensics and criminology science should study both types of activity (the prosecution coupled with the defence) equally.

4 The equality of the sides – real or imaginary

Law currently in force proclaims the equality of each side in criminal proceedings. However, it should be admitted that in practice such equality generally is not observed in our courts. There are a number of explanations, one of which is the question of legislation as we are in a transitional period. Another explanation may be that the defence is clearly deprived of any possibilities on the part of forensic science. In practice, all scientific recommendations are focused on the investigator's activity during the police investigation.

If we focus our interest on the problem of realisation of declared principles of controversial trial and equality of sides, it is necessary to note that criminology and forensics must provide with their products not only prosecutors and investigators, but also the defence and give them the proper means and methods of effective realization of their tasks on the basis of current law (Zhizhina, 2012).

Finally, the third direction in the development of Russian criminalistics of today may be specified as broadening the

sphere of recommendations from the limits of traditional police investigation into the courtroom, to the activities of the public prosecutor and defence lawyers (Shepitko, 2012). These two, in executing their functions during the controversial trial proceedings, employ criminalistic means in collecting, presenting and examining evidence, in order to persuade the judge to take the evidence as acceptable and admissible.

Until recently, the common opinion of the majority of Russian criminalists was that forensics have been focused on improving the effectiveness only of the police investigation, so consequently most of the recommendations have been worked out for use only in the pre-trial stage of police investigation (Yablokov, 2011). As for other participants in the trial, it was assumed that they might use the results of research and recommendations specially intended for the investigator, but had to accommodate it to their tasks. Now it appears that this point of view has some basis only in the terms of the inquisitorial type of criminal procedure and under the law of the former, out of date judicial system.

Russian criminologists have come to believe that forensic science should work out not only recommendations for the needs of the prosecution during the police investigation, but to extend it to the field of security, and then to extend research for the interests of the trial in the court.

5 The balance between the impartiality of judge and the task of evidence examination in the trial

Another issue on which I would like to dwell is that although the rivalry during the trial is expressed in the real dispute between the prosecution and defence, and the judge must be an impartial arbitrator, the judge cannot stand idly by in this dispute.

Moreover, this judgment is significant because the judge is responsible for the completeness and validity of evidence which are put into the sentence. The judge conducts the trial, fixes the sequence of examination of evidence, so it determines his behaviour in the trial. The non-active position of the judge will inevitably lead to the lack of objectivity, and then to the invalid judgment.

In addition, it should be noted that the recommendations of scientists cannot be formulated without taking into account the recipients of it, and their place in the judicial procedure. Each person who executes any professional function stipulated by his/her own judicial status, must employ special techniques and methods, may view things in a different

light than other participants, and even achieve the aims in a different way than others. Therefore, it is time to talk about self-development of targeted recommendations for coroners and public prosecutors, and also for barristers and for judges (Vozgrin, 2004).

In this regard, Russian criminologists have come to the decision to extend the field of study of criminology to all stages of the procedure and to all its participants.

6 Concluding remarks

In the last two decades all branches of criminalistics continued develop.

1. In the field of the **general theory of criminalistics** research of separate particular criminalistics theories were being conducted; for instance, on general techniques of crime investigations, theory of criminalistic forecasts, theory of time-space relationships, etc.

2. In the field of **forensic technologies**, research in the sphere of creating and putting into practice new ways of personal identification by traces, discovered in the course of criminal investigation (from creating »odour banks« to so called »genetic fingerprinting«) and new rational techniques of expertise is conducted on a wide scale. Research in the field of evidence falsification gained in importance (Yablokov & Shepitko, 2012).

The development of various criminalistic data-retrieval systems (DRS) based on computer technologies is, of course, vitally important. These systems must form a unified state-controlled network and some of them must be connected to similar DRSs of other states and international police organizations (Interpol in particular).

3. Research in the field of **criminalistic tactics** is especially active currently. More and more researchers come to recognize the fact that the activities of criminal investigators and other actors of criminal inquest under **conditions of counteraction** (real or potential, active or passive, direct or indirect) to proper performance of their function is a matter of special studies. Given these conditions, corresponding tactical means for the needs of investigators, defence lawyers and other professional actors in criminal legal proceedings are being developed.

The current development of criminalistic tactics is also characterized by the tendency to resort to »non-traditional investigation techniques« such as applying hypnosis, ESP (extra-sensory perception), etc., in the course of investigation.

4. The development of **criminalistic methodology**, the conclusive section of criminalistic science, in contemporary Russia takes place in the following directions:

In the first place, there is the creation of effective criminalistic characteristics of certain types of crimes. This helps to optimize the investigation of particular crimes by means of putting forward versions that are most likely.

The research aimed at creating generalized criminalistic portraits of persons committing serial or other serious crimes (»profiling«) are of especial interest and importance.

The adaptation of previously developed specific investigation techniques to new realities of contemporary world is also a very urgent aspect of this section of criminal studies (Gustov, 2004; Vozgrin, 2004). The particular attention of specialists nowadays is drawn to problems of criminalistic support of the investigation dealing with terroristic, serial and »contract« crimes, as well as crimes committed by organized groups.

This is a brief description of the major changes in Russia's early 21st century forensics and criminalistics theory.

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Težave in načini razvoja sodobne ruske kriminalistike

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Članek se ukvarja z glavnimi smermi razvoja ruske forenzike in kriminalistične teorije od začetka 21. stoletja naprej. V Rusiji se je v začetku 1990-ih zgodila socialna revolucija in z novo ustavo je Rusija postala država prava in pravičnosti, ki je razglasila vladavino prava ter dala prednost človekovim pravicam in svobodi. V skladu z razglašenimi prednostnimi nalogami so bile izpeljane množične sodne in pravne reforme, ki še vedno trajajo. Rusija je začela napredovati iz preiskovalnega tipa kazenskega postopka v bolj kontroverznega. Spremembe, ki so se zgodile v domači in tuji politiki, so imele velik vpliv tudi na osnove sodobne ruske kriminalistike. Prilagoditev novim razmeram pravne realnosti je postala glavna naloga ruske kriminalistike zadnjih nekaj let. Članek obravnava modifikacijo ruske kriminalistike (obeh, forenzičnih in znanstvenih raziskav).

Ključne besede: kriminalistična preiskava, sojenje, kriminalistika, forenzika, kontroverznost, nove kriminalistične taktike

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