

# THEORETICAL AND PRACTICAL INFLUENCES ON THE KNOWLEDGE OF THE CRIMINALISTIC METHOD VERIFYING THE TESTIMONY ON THE SPOT

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**Abstract:** This study represents just a partial result of the research of the criminalistic method Verifying testimony on the spot “výsk. 151” and deals with its basic aims. The primary aim based on theoretical and empirical analyses realised by research is to describe the level of theoretical knowledge processing the verifying testimony on the spot in criminalistics. The secondary aim is to find out weaknesses and troubles in practical applying the verifying testimony on the spot in the process of its use in clearing up crimes. The authors of this study makes a short analysis of proposed changes that are necessary for effective using the verifying testimony on the spot not only in police practice but also and mainly in the process of crime investigating.

**Keywords:** testimony on the spot, differences, criminalistics principles, similarities, troubles, criminal investigation.

## INTRODUCTION

The beginning of the modern criminalistics we usually dated on the end of 19th century which represents the application full scientific methods in to criminalistic. The founder of the modern criminal-

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istics is regarded to be an Austrian criminalist and a professor of criminal law Hans Gross, the author of the first textbook of scientific criminalistics called *Handbuch für Untersuchungsrichter als System der Kriminalistik* (Handbook for investigating judges as a system of criminalistics, 1893) where he tried to systematize the then knowledge of the mentioned scientific field. He is also the author of the publication called *Psychology in criminalistics* where he, in a revolutionary way, claims that the main mission of psychology in the field of legal science shall be represented by the study of mental condition of participants in a criminal act.

Criminalistics went through a very long development alongside with law, especially with criminal law. That period was marked by various degrees and forms of physical violence of and non-objective procedures of those who were responsible for justice and punishment of the accused persons. However, those historical characters cannot be reproached with anything at the present time, as they followed the principles valid at that time, primarily the generally recognized rule, namely "*confessio regina probationum*" (Confession is the queen of evidence). Many criminalists are of the opinion that it is essentially not important what the name of a method or an investigation action is; what is important is the achievement of the investigation aim, namely the acquisition of relevant information about a particular crime and an offender. Discussions on the notion of the individual methods, their contents, principles and rules in carrying out the individual criminalistic methods are perceived as academic debates that are far away from practice of criminalistics.

## DEVELOPMENT OF OPINIONS ABOUT THE VERIFYING OF THE TESTIMONY ON THE SPOT

In the basic part of this study we will try to summarize the development of the opinions about the notion and the substance of the method called *the verifying of the testimony on the spot* as a criminalistic method in both the Czechoslovak and, subsequently, Slovak criminalistics up to its legal regulation.

Up to the breakup of the Austrian-Hungarian monarchy, the development of criminalistics methods in Slovakia was dependant on the attitudes of the Police Centre in Budapest; as late as the end of the World War I., the development of the criminalistic methods was being determined by the police and gendarmerie centres in Prague. The creation of the Czechoslovak criminalistics can be connected with the creation of the Czechoslovak Republic (28 Oct. 1918). The Czechoslovak criminalistics took up the experience of policemen of Austria-Hungary. At the same time, criminal laws of the Austrian empire were passed (Imperial Act 119/1873).

At the beginning of the 1930s several important publications on criminalistics were published under the guidance of Jozef Šejnoha, e.g. *Criminal psychology* (*Kriminálna psychológia*, 1930), *Lessons in how to gather information at the scene of crime* (*Poznávacie učenie*, 1931), *Tactics of criminalistics*, (*Kriminálna taktika*, 1932) or *Education system in the field of criminalistics* (*Systém kriminálnického vzdelávania*, 1935). In the mentioned books, the author tried to summarize and systematically develop, primarily, the practical part of criminalistics without failing to mention the theory of criminalistics as well. A lot of books dealing with criminalistics were translated from German, e.g. a brochure of a German criminalist Polzer called *Practical handbook for criminalists* and published in 1931 (STRAUS, J., et al. 2004, or PORADA, V. et al. 2007).

In 1932, an important publication called *Investigation methods of security service* (*Výšetrovacie metódy bezpečnostnej služby*) by Vítězslav Čelanský was published. The author of the book repudiates the so-called *criminalistic and technical methods* and means of evidence, and puts the main stress on the con-



fession of an offender. A principle was being enforced that it was necessary to interrogate an accused person by using many ways of interrogation and as long as to get the accused person's confession.

An important contribution to the literature on criminalistics in the 1930s was the edition of a textbook by the major of gendarmerie Rudolf Košťák. The name of the textbook is *Textbook on investigation tactics (Učebnica pátracej taktiky)* and it describes the methods of criminalistic technique and tactics. It is possible to note that at the time after the creation of the first Czechoslovak Republic criminalistics was being developed under a marked influence of foreign authors, primarily Austrian, German and French criminalists (E. Locard, E.F. Vidocq, H. Gross)<sup>4</sup>. However, in the work of the mentioned foreign authors we do not find any signs of the method of our study, namely the verifying of the testimony on the spot.

As early as after World War II, it was possible to register essentials, as to the content and the form, similar to the method called verifying the testimony on the spot. Within the practice of the Czechoslovak criminalistics, such a method / action that is very similar to the method of the verifying of the testimony on the spot, namely by using particular tactics, came into existence earlier than the verifying of the testimony was processed by criminalistics as a partial method and before it was mentioned in the specialist literature on criminalistics for the first time (VENHAČ, R. 1987). The first, though rather unclear and modified, appearance of the verifying of the testimony on the spot was in the publication called *The Essentials of Criminalistics (Základy kriminalistiky)* (NEMEC, B. 1954) where the verifying of the testimony appeared as "verifying of different circumstances and facts at the scene of crime". The author tried to describe criminalistic and tactical methods used until then while pointing out some outdated notions and names of the method and replacing them by "the verifying of different circumstances".

In 1957, the *Criminalistics proceedings* published a specialist article on the verifying of the testimony on the spot, at that time still called "crime scene response". The author of the article, a Soviet criminalist S. Stepichev (1957), dealt with possibilities of verifying the evidence gained by, e.g. the testimony of the accused person, and came to the conclusion that "...crime scene response is considered to be an independent action of investigation that differs in the essentials and tactics in carrying it out from other types of investigation, namely crime scene inspection, interrogation on the spot and investigation experiment." The author of the book also points out the difference in using the term of *the verifying of the testimony on the spot* and states that: "The fact of the non-uniform using of the term results in different ways of both carrying out of the verifying of the evidence and procedural regulations of this way of the verifying of the evidence".

The author at the same time describes the content of that way of the verifying of the testimony and specifies situations where such a way of verifying the testimony can be used (S. Stepichev, 1957):

- when the accused person pleads guilty and their plea of guilty must be verified, or when the accused person lies in their testimony and the obtained evidence is contrary to their testimony, the plea must be confirmed by objective facts;

4 For example, E. Locard (1877-1966), a French university professor in Lyon is regarded to be one of the founders of modern forensic science. He formulated a basic principle of the forensic sciences saying: "Every contact leaves trace". E.F. Vidocq (1775 –1857), originally a French criminal, later a police officer and a secret agent, that at the end of his life became founder and chief of the organisation called *Sûreté* (1812-1827), the first modern police organization in France. In 1833, he founded the first private detective agency in Europe. He is considered to be the cofounder of many disciplines of modern criminalistics. H. Gross (1847-1915) Austrian criminalist and professor of criminal law. He is the author of the first textbook of scientific criminalistics namely *Handbuch für Untersuchungsrichter als System der Kriminalistik* (Textbook for investigation judges as a system of criminalistics).



- when it is necessary to verify facts as stated in the testimony of witnesses and aggrieved persons;

Though the author formed the essentials of the theory of the verifying of the testimony on the spot, when looking for a name for the special deed of the investigation he came to conclusion that the method represents “reconstruction of a situation and circumstances of when a crime was committed”. This is also the way of how he tried to solve questions of different substance and procedural importance for the purpose of forming new methods in criminalistics. The proposed solution became special by his proposal to introduce it for various, at that time only being formed, methods a unique name, i.e. “reconstruction of a situation and circumstances of a crime”. His intention has never been carried out. Stepičev, however, does not speak about a method within criminalistics but about a tactical way of verifying the evidence (KONRÁD, Z. 2006).

In the 1960s, the notion of a “*crime scene response*” appeared, in various circumstances, in specialist literature, e.g. the authors Matiašek, Bárta, Soukup (1966) wrote about *crime scene response* as one of the procedures of how to revive the memory of an interrogated person during interrogation; the authors, however, did not mention this procedure as a way of verifying the testimony. Later, the same authors wrote about *crime scene response* as a form of verifying the testimony given earlier. Though they did not deal with the issue in great detail, they managed to express the substance of such a deed concisely: „The substance of the deed consists in comparing the testimony of the interrogated person as given earlier to the objective situation on the spot (MATIÁŠEK, J. SOUKUP, J. BÁRTA, B. 1968).

At that time, the method of the verifying of the testimony on the spot started to be mentioned in specialist literature as an independent deed of investigation in analyzing various crimes. This can be supported by the article of P. Kraus (1957) titled as *Václav Mrázek Case (Případ Václava Mrázka)* that concerns a series of sexual murders where the author states: “The whole investigation of the Vaclav Mrazek case was carried out in the sense of the strongest objectivity ... . When it seemed absolutely necessary and efficient, Václav Mrázek was transported to the area where, as he admitted during interrogation, he had committed his crimes. It was not about the so-called reconstruction of the case but about Mrazek’s showing the way, upon the investigator’s exhorting him to do so, to the scene of crime when sitting in a vehicle; once there, the offender (Mrazek) marked the exact spot in the area on the basis of benchmarks.”

That period also includes the beginning of forming and theoretical processing some of, at that time new and theoretically not processed, methods of criminalistics that are represented by e.g. investigation experiment, reconstruction of a particular and the so-called crime scene response. Their beginnings, however, were marked by certain inaccuracies as is usual at the beginning of obtaining knowledge in general. The inaccuracies not only had but still have negative impact both on forming the criminalistic practice and thinking within the field of criminalistics but also on the quality of legal regulations in the process of proving the guilt. Many specifying opinions but also non-exact ones can be observed until the 1990s.

The division of Czechoslovakia into two independent parts and stormy transformation of the Slovak society during 1989 – 1992 also had impact on the theory and practice within the field of criminalistics. The creation of the independent Slovak republic means that the so far uniform Czechoslovak criminalistics was divided into two parts that went its own way. New institutions were formed that became a basis for the development of criminalistics both as a science and practice. In the Slovak Republic it is the Forensic science institute and the Police Force Academy in Bratislava that come into existence, whereas in the Czech Republic it is the Institute of Criminalistics of the Police of the Czech Republic and the Police Academy of the Czech Republic.



Subsequently, under the influence of various factors, the subject of criminalistics started to differentiate in comparison with the previous uniform Czechoslovak criminalistics. In regard to this fact it is important to present a change of the opinion relating both to the Slovak and the Czech criminalists, as to the method of the verifying of the testimony on the spot as an independent criminalistic method, and its way to having been passed in the Criminal Procedure Codes of both the countries.

## NOTION AND ESSENCE OF VERIFYING THE TESTIMONY ON THE SPOT

The latest Czech author who gathered all the knowledge about the method, up to now, in his monograph called *Verifying the testimony on the spot (Prověrka výpovědi na místě)* was Z. Konrád (2006). Based on the essence of the verifying of the testimony on the spot, he specified, distinctly from the previous authors, the notion of the method. He came to the conclusion that: "Verifying the testimony on the spot is a specific method of criminalistic practice that enables to obtain criminalistically and legally relevant information through the comparison of the previous testimony to the momentarily objective situation at the scene of crime, objects being found there and being pointed at by the interrogated person".

A markedly strict definition of this method is due to I. Šimovček (1997), he as the author of the chapter about verifying the testimony on the spot, stated in the textbook called *Criminalistics (Kriminalistika)* that verifying the testimony on the spot is: "a method of clearing up within the field of criminalistics and consists in the following: the earlier interrogated person shows the place and points at the objects relating to the particular crime, the interrogated person also describes circumstances necessary to find out the relation to the mentioned objects of the crime or, for the purpose of better clarifying up the relation, the interrogated person demonstrates activities carried out when committing the crime; as a criminalist examines the spot and the objects pointed at by the interrogated person, the criminalist compares the testimony of the interrogated person and the facts found out to the situation on the spot to verify the evidence gathered up to now and to possibly find out another".

On the other hand, V. Krajník and others (2005) specifies, in his textbook *Criminalistics*, the method of the verifying of the testimony on the spot as follows: "...it is a criminalistic method that makes it possible to get from a person a verbal testimony on the spot of the committed crime." V. Krajník, however, points to the fact that, in essence, the method does not represent verification of the truthfulness of the testimony, it is just a method used to obtain the testimony under other conditions than is the testimony based on memory, and next Krajník adds that the method verifies the authenticity (not truthfulness) of the testimony. The aim of this method is to find out whether the person giving testimony knows the particular place and whether the content of the testimony corresponds to the place. This may be achieved by watching the person giving testimony and observing the way in which they move and orientate themselves on the spot and their verbal communication. The fact the method of the verifying of the testimony on the spot has become in Slovakia not only an independent criminalistic method but also an independent procedural deed and means of evidence is confirmed by the method's having been passed by the Criminal Procedure Code 2005 Act no 30/Coll.



## STATE OF THE VERIFYING OF THE TESTIMONY ON THE SPOT AND POSSIBILITIES OF ITS USING

The aim of the research has been to carry out a scientific analysis of the level of applying the verifying of the testimony on the spot as a criminalistic method in the Slovak Republic. The comparison of the theoretical level that is critically compared to the practical level of applying the method in clearing up crimes and elaborating an effective system of recommendations for the purpose of improving police work, primarily investigation. (METEŇKO, J., DANKOVIČ, M. 2009)

Pre-research of the mentioned method has been followed by a questionnaire which represents a dominant method in collecting empirical material. Subsequently, a research of selected respondents was conducted. After the evaluation of the research, the authenticity of the empirical knowledge has been compared and interpreted in relation to the main and partial hypotheses. The results of the research have been incorporated into a system of recommendations for the purpose of making the police work more effective.

### Description of the researched sample

The researched sample, composed of 186 police officers (180 men and 6 women) having been 1 – 25 years with police. We have analyzed the content of data obtained during a directed speech with 27 respondents. An independent group (62 respondents) was formed consisting of students of the Police Force Academy and secondary police schools (only students of the post-secondary qualification study – commissioned officers enhancing their police education).

Basic group composed of police officers of: the District Headquarters of the Police Force, Regional Headquarters of the Police Force and other units of the Police Force working within the field of investigation; police officers working in CID; prosecutors, judges and barristers using the above mentioned method or the results of the method in their work; students and teachers of all police school levels.

#### Selected group:

V – 80 investigators and authorized police officers of the District Headquarters of the Police Force, Regional Headquarters of the Police Force and other units of the Police Force based on the structure of the selection.

OP - 44 officers of CID using the researched method in the units of the Police Force as mentioned in the previous part.

#### Combined selected group composed of:

PR - 5 prosecutors (random selection from the District Public Prosecution Office, Regional Public Prosecution Office, General Prosecution Office),

J - 5 judges (random selection from The District Court, Regional Court, Supreme Court),

B - 5 barristers,

T – 12 teachers (2 teachers from each police school in Slovakia (in Devínska Nová Ves, Pezinok, Košice, Police Force Academy in Bratislava) and faculties of law and/ or schools teaching criminalistics.

S – 62 police school students.



Selected group consisted of 124 police officers altogether from the following institutions: Justice and Criminal Police Office (91), Anti-Corruption Agency (9), Inspection of the Ministry of Interior of the Slovak Republic (6) and other units of the Police Force (18). The selected group was formed by random proportional selection with a falling quotient; the most respondents were represented by the District Headquarters of the Police Force, fewer respondents were represented by the Regional Headquarters of the Police Force, Headquarters of the Police Force and other units. The research was conducted in the Justice and Criminal Police Office (investigators, operational workers of the Police Force, Criminal police), inspection units of the Inspection service of the Department of the Control and Inspection service of the Ministry of Interior of the Slovak Republic, Anti-Corruption Agency of the Headquarters of the Police Force, Border and Foreign Police Office (Illegal Migration Combat Unit), District and Regional Traffic Inspectorates, police departments, General Prosecution Office, Regional Public Prosecution Office, District Public Prosecution Office, Special Public Prosecution Office, Regional Court, District Court, Police Force Academy and secondary police schools.

Combined group (27 respondents) consisted of prosecutors (5), judges (5), barristers (5) and teachers of police schools and civil schools (12) specialized in criminalistics and criminal law. The combined group was formed by random with assumed territorial specification and consisted of judges and barristers specialized in criminal law and using the results of the verifying of the testimony on the spot as part of the criminal law. An independent group of students (62) was composed of external students of the Police Force Academy and those of post-secondary enhancement study at secondary police schools (police officers trying to enhance their police education).

### Methods and Methodics in solving the research issue

In regard to the content and the complexity of the research, the theoretical and empirical methods have been used depending on the aims of the individual research issues. The methodics of the research has been conditioned by both the object of the research and the aim of the conducted research.<sup>5</sup>

The following methods have been used in processing the theoretical and empirical conclusions:

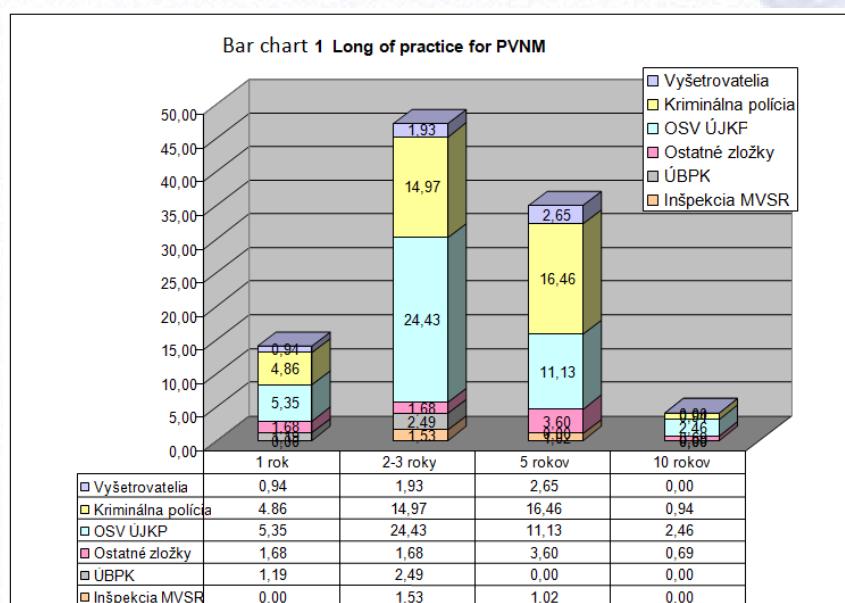
- Studying written sources;
- Typology study method of written sources (Slovak and foreign literature).
- Formal logical thinking method – analysis, synthesis, induction, deduction, analogy, comparison and generalization, both in theoretical processing the knowledge and in evaluating the empirical research;
- Directed speech method;
- Questionnaire method;
- Statistical method (in processing the results);
- Method of generalizing the experience.

<sup>5</sup> No research conducted in connection with the verifying of the testimony on the spot in Slovakia, former Czechoslovakia or any other country is known to the researchers of this study. Researches relating to the testimony, e.g. effectivity of specific interrogation techniques (Anglo-American sources) are known in foreign literature. However, Anglo-American system insists on interrogation and crime scene inspection. As one of the methods examining truthfulness of the testimony is represented by a polygraph (lie detector).



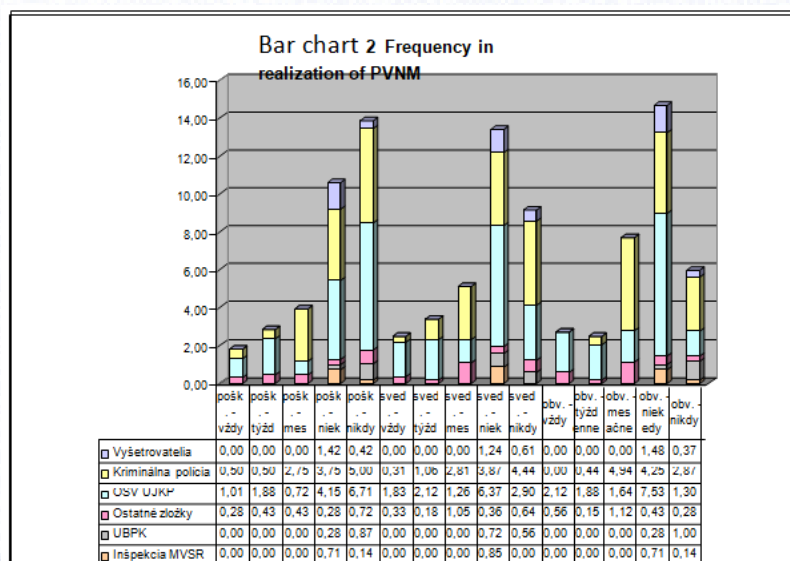
## SELECTED RESULTS OF THE RESEARCH

From the point of view of the theoretical knowledge and practical skills, the researched issue concerns the ability to manage (planning, carrying out and documenting) the verifying of the testimony on the spot as to the police practice. Up to 47% of the respondents think that 2 years of police practice is enough to manage the verifying of the testimony on the spot sufficiently well, 34.9 % of the respondents are persuaded that it is necessary to have work experience of at least 5 years of police practice. One can come to the conclusion that both the groups of the respondents think they manage the method sufficiently well and that just the mentioned length of their police practice is sufficient enough to carry out the verifying of the testimony on the spot in a highly qualitative way (Bar chart 1).

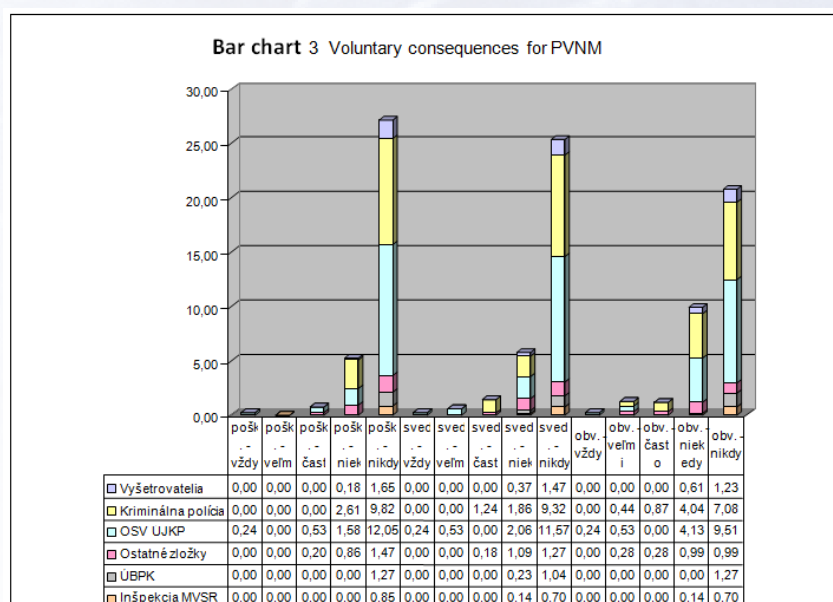


The frequency of the use of the verifying of the testimony on the spot by police officers shows that using the method depends on the procedural position of the person with whom the verifying of the testimony on the spot is being carried out.

In case of the aggrieved person, 13.9 % of the respondents have never used the method of the verifying of the testimony on the spot, and only 10.9 % of the respondents use the method occasionally. 13.4 % of the respondents use the method sometimes, whereas 9.1% of the respondents never use the method. The frequency of using the method is the highest with the accused persons. The method is sometimes carried out by 14.7 % of the respondents, used once a month by 7.7 % of the respondents, and has never been used by 6.0 % of the respondents (Bar chart 2). The method of the verifying of the testimony on the spot is the most frequently used in situations when the accused person (in committing the crime) was moving on various places, or when it is necessary to use the method for the purpose of finding and seizing the objects the accused person stole and hid on one or several places. The method of the verifying of the testimony on the spot is the most frequently used in cases when it is necessary to document the consequences of the committed crime.



To obtain a voluntary agreement from an aggrieved person for the purpose of using the method of the verifying of the testimony on the spot has never been a problem for 27.1 % respondents. It has sometimes been a problem to obtain a voluntary agreement with 5.2 % of the respondents, and only 0.2 % of the respondents always have a problem to obtain a voluntary agreement to use the method of the verifying the testimony on the spot with an aggrieved person. It has never been a problem to obtain a voluntary agreement of a witness with 25.4 % of the responders, it was sometimes a problem with 5.8 % of the respondents, and often a problem with 1.4 % of the responders. Just like in case of the aggrieved person, it is always a problem to obtain a voluntary agreement with 0.2 % of the respondents. As to the agreement of the accused person, it has never been a problem to obtain it with 20.8 % of the respondents, it is sometimes a problem with 5.8 % of the respondents and very often a problem to obtain the agreement with 1.2 % of the respondents. Similarly to the aggrieved person and the witness, it is always a problem to obtain an agreement from the accused person with only 0.2 % of the respondents (Bar chart 3).



Time necessary to prepare the method of the verifying of the testimony on the spot in all services of the Police Force differs depending on many factors, e.g. complexity of a particular case, insufficient amount of time – high endurance, underestimating to prepare the method, etc. The majority of the respondents prepare the verifying of the testimony on the spot within 0,5 – 1 hour (AP/aggrieved person – 13,5%, W/witness – 13,2%, AP/ accused person – 12,5%). Other category is represented by more than 3 hours (AP – 1,6%, W – 1,4%, AP – 1,5%). No preparation is made in case of AP – 3,0%, W – 3,3%, AP – 2,6%). Based on the results of our research we have found out that the preparation for the verifying of the testimony on the spot is with all police officers the same (Bar chart 4).

Persuasion that an accused person does not say the truth during the verifying of the testimony on the spot is gained by police officers in various ways. Untrue testimony of an interrogated person is the most frequently based on contradictions by comparing the testimony on the spot with the previous testimony – 39,6 %, comparing the content of the testimony with other information or evidence – 28,2 %, comparing utterances of nonverbal communication – 17,6 %, and finally based on one's own intuition and professional experience – 14,6 % of the respondents think that a person does not say the truth in the process of the verifying of the testimony on the spot (Bar chart 5).<sup>6</sup>

If a person giving testimony states differences in their testimony in comparison to the previous testimony, 66.5 % of the respondents try to find out the reason of such a testimony, 4.8% of the respondents do not find out the reason of such a testimony.

The reasons of differences as stated in a testimony of persons in the process of verifying the testimony on the spot can be seen in the table 1 below. The most frequent reason, as stated by respondents, with *witnesses* or *aggrieved persons* is considerable lapse of time from a particular crime – 13.4 %. Another frequent reason is represented by weaknesses that concern perceiving and remembering important information – 11,1 %, very frequent reasons are represented by changes towards the original situation at a scene of crime – 7,2 %, and fear of revenge by the offender of a crime – 6,6 %. In case of suspicious or accused persons the difference in their statements are represented by covering up for possible offenders – 12,0 %, weaknesses that concern perceiving and remembering important information – 10,8 % and considerable lapse of time from a particular crime 10,4 %.

Table 1

| Príčiny odlišností vo výpovedi osôb        | Inšpekcia MVR | ÚBPK | Ostatné zložky | OSV ÚJKP | Kriminálna polícia | Vyšetrovatelia | Podiel v % |
|--------------------------------------------|---------------|------|----------------|----------|--------------------|----------------|------------|
| pošk./sved. - nedostatky vnímania a pamäte | 0,51          | 0,38 | 0,76           | 4,18     | 4,29               | 0,94           | 11,1       |
| pošk./sved. - časový odstup                | 0,31          | 0,48 | 1,26           | 6,56     | 4,19               | 0,61           | 13,4       |
| pošk./sved. - zmeny situácie               | 0,15          | 0,08 | 0,27           | 3,67     | 2,61               | 0,47           | 7,2        |
| pošk./sved. - citové prežívanie            | 0,18          | 0,25 | 0,34           | 2,52     | 2,05               | 0,33           | 5,7        |
| pošk./sved. - krytie spolupách.            | 0,08          | 0,31 | 0,65           | 2,38     | 2,33               | 0,3            | 6          |
| pošk./sved. - strach z pomsty              | 0,05          | 0,42 | 0,53           | 2,31     | 3,17               | 0,11           | 6,6        |
| obvin. - nedostatky vnímania a pamäte      | 0,48          | 0,38 | 0,95           | 4,61     | 3,36               | 1,02           | 10,8       |
| obvin. - časový odstup                     | 0,23          | 0,38 | 0,65           | 4,97     | 3,73               | 0,41           | 10,4       |
| obvin. - zmeny situácie                    | 0,11          | 0,31 | 0,5            | 3,67     | 2,33               | 0,33           | 7,3        |
| obvin. - citové prežívanie                 | 0,06          | 0,19 | 0,34           | 2,09     | 1,31               | 0,39           | 4,4        |
| obvin. - krytie spolupách.                 | 0,2           | 0,44 | 0,8            | 4,18     | 5,97               | 0,44           | 12         |
| obvin. - strach z pomsty                   | 0,18          | 0,21 | 0,57           | 2,09     | 1,96               | 0,17           | 5,2        |

6 Another possibility of the law enforcement bodies of how to verify whether a person says the truth in the process of verifying the testimony on the spot is to use a polygraph (lie detector).



If a police officer, during verifying the testimony on the spot, finds out that a person gives false testimony, there are different methods, forms and ways of how to persuade the person to change their false testimony into a truthful one. The most frequently used ways of how to effect on the person giving false testimony during verifying the testimony on the spot, and as stated by the respondents, is presenting evidence and other information. The respondents point out contradictions in testimonies and they also state other evidence as an argument – 25.5 %. Illogical arguments during verifying the testimony on the spot are used by 23,9 % of offenders; 18,9 % of the respondents leave the person to give a false testimony and they document such a testimony for next use; emotional strain of a person giving testimony is being used and the tactics adopted to the method by 13,1 % of the responders. The least responders use psychical effecting on a person giving testimony as a form of pressure to influence the attitude of the person during verifying the testimony on the spot – 6,9 % (Bar chart 6). Whether a police officer manages to induce the person giving the testimony to change their attitude, i.e. to change their testimony, depends on age, sex, education, intellectual abilities and persuasiveness of the police officer.

Using psychology by police officers in their work depends on their theoretical knowledge and practical skills. A high number of officers, namely 56,0 % stated not to use any psychology in their work, in contrast to 14,6 % of the respondents using psychology knowledge in verifying the testimony on the spot. As many as 11.1 % promote an individual approach to the person giving testimony during verifying the testimony on the spot. Non-verbal communication is being used by 6.5 % of the respondents, whereas 4.2 % of the elements are assertive ones. 3.6 % of the respondents think to be able to recognize, through psychology knowledge, a lying person in various stages of the proceedings. Communication with a person by means of psychology tactics is used by 2.3 % of the respondents, and only 1.7 % of the respondents prefer getting to know the nature of the person giving testimony by using the method of verifying the testimony on the spot (Table 2).

Table 2

| Využitie psychológie v policajnej praxi | Inšpekcia MVS | ÚBPK | Ostatné zločky | OSV ÚJKP | Kriminálna polícia | Vyšetrovatelia | Podiel v % |
|-----------------------------------------|---------------|------|----------------|----------|--------------------|----------------|------------|
| charakter osobnosti                     | 0             | 0    | 0              | 0        | 0,94               | 0,77           | 1,7        |
| poznanie klamstva                       | 0             | 0    | 0,61           | 0        | 3                  | 0              | 3,6        |
| asertivita                              | 0             | 0,38 | 0              | 0        | 1,5                | 2,32           | 4,2        |
| prístup k osobe                         | 0             | 0,38 | 1,07           | 2,89     | 6,74               | 0              | 11,1       |
| neverbálna komunikácia                  | 0,36          | 0,77 | 0              | 2,89     | 2,06               | 0,44           | 6,5        |
| komunikácia                             | 0,36          | 1,15 | 0              | 0        | 0                  | 0,77           | 2,3        |
| áno, využívam                           | 0,36          | 0    | 2,3            | 6,66     | 4,87               | 0,44           | 14,6       |
| nie, nevyžívam                          | 1,48          | 1,15 | 3,22           | 31       | 18,36              | 0,77           | 56         |

Compared to the opinion of police officers in the table above, 77.8 % of prosecutors, judges, barristers and teachers use psychology knowledge during a directed speech in verifying the testimony on the spot. Only 3.7 % of the respondents have never used psychology knowledge (Bar chart 7).

Advantage of using specialists, e.g. psychologists, experts, interpreters, etc. in verifying the testimony on the spot follows, as stated by respondents, from specialist counselling in all spheres of human activities necessitating specialist knowledge police officers do not have. This leads primarily to elucidating a particular crime (its course, reason of origin, mechanism of effecting objects, etc.), or clarifies the offender's behaviour – 30.9 %. No advantages of the presence of specialists are perceived by 12.3 % of the respondents. The presence of the specialists is welcome as suitable by 3.8 % of the respon-



dents, namely in cases of communicating between parties to a case. An advantage of providing more objective evaluating the testimony by a specialist in verifying the testimony on the spot is perceived by 3.4 % of the respondents. Judging the psychological condition of the person giving testimony and interpreting done by specialists are perceived as indispensable and representing advantage by 3.0 % of the respondents. The activities of estimating whether the interrogated person could have committed a particular crime and evaluating trustworthiness and truthfulness of the testimony by means of specialists are used by 2.4 % of the respondents. 28.9 % of the respondents did not know how to answer the question (Table 3).

Table 3

| Výhody účasti odborníkov             | Inšpekcia MVS | ÚBPK | Ostatné zložky | OSV ÚJKP | Kriminálna polícia | Vyšetrovatelia | Podiel v % |
|--------------------------------------|---------------|------|----------------|----------|--------------------|----------------|------------|
| odborné poradenstvo                  | 1,27          | 1,3  | 3,36           | 14       | 11                 | 0              | 30,9       |
| nie sú výhody                        | 0             | 0    | 1,22           | 5,19     | 3,73               | 2,2            | 12,3       |
| výmena názorov                       | 0             | 0,31 | 0              | 0        | 3,54               | 0              | 3,8        |
| tlmočenie, psycholog. pôsobenie      | 0             | 0,57 | 0              | 0        | 1,31               | 1,1            | 3          |
| odhad, či to osoba mohla vykonať     | 0             | 0    | 0              | 0        | 1,31               | 1,1            | 2,4        |
| núti strany objektívnejšie vypovedať | 0,43          | 0,57 | 0              | 0        | 1,31               | 1,1            | 3,4        |
| dokazovanie                          | 0             | 0    | 0,84           | 5,62     | 5,59               | 0              | 12,1       |
| lepšie pochopenie - zadokumentovanie | 0             | 0,76 | 0              | 2,45     | 0                  | 0              | 3,2        |
| neviem                               | 0,84          | 0,31 | 2,21           | 16       | 9,51               | 0              | 28,9       |

Directed speech with prosecutors, judges, barristers and teachers showed that 63.0 % of the respondents found the most important role of the specialists in providing specialist counselling within a specific field during verifying the testimony on the spot. 37.0 % of the respondents find necessary not only the help of interpreters but also psychologists who help them to familiarize with psychological aspects of offender's behaviour at the scene of crime (Bar chart 8).

The question about what theoretical aspects of the method called verifying the testimony on the spot are necessary to be processed, 29.6 % of the respondents answered and stated, first of all, the necessity to remove contradictions within the Criminal Procedure Code concerning the method. Next, it is necessary to process, in greater detail, instructing the persons giving the testimony, and the procedural course in carrying out the mentioned method – 25.9 %. 14.8 % of the respondents stated that the conditions of carrying out the method had been refused by the persons giving testimony and they also stated their doing away with objections of bias towards the persons giving testimony. On the other hand, the theoretical processing of the method at the present time is sufficient for 29.6 % of the respondents (Bar chart 9).

The method of the verifying of the testimony on the spot and the possibilities of how to use it more frequently as a criminalistic method could be improved by better professional education of police officers – 19.8 %, increase in the number of investigators – 15.1 %, better technical equipment of the police – 9.7 %, experience exchange between senior and junior police officers and experience exchange with police officers abroad – 6.0 %, more powers for police officers in carrying out procedural deeds – 2.1 % and better information exchange among the individual police units – 0.5 %. Up to 46.8 % of the respondents did not know how to answer the question (Table 4).



Table 4

| Možnosti<br>skvalitnenia PVNM                           | Inšpekcia<br>MVSР | ÚBPK | Ostatné<br>zložky | OSV<br>ÚJKP | Kriminálna<br>polícia | Vyšetrovatelia | Podiel v % |
|---------------------------------------------------------|-------------------|------|-------------------|-------------|-----------------------|----------------|------------|
| odborná príprava                                        | 0                 | 0,88 | 0,53              | 0           | 17,15                 | 1,21           | 19,8       |
| lepšia techn. vybavenosť                                | 0                 | 0,88 | 0,53              | 3,89        | 3,17                  | 1,21           | 9,7        |
| širšie právomoci pri<br>realizácii úkonu                | 0                 | 0    | 0,84              | 1,3         | 0                     | 0              | 2,1        |
| lepšia informovanosť                                    | 0                 | 0,46 | 0                 | 0           | 0                     | 0              | 0,5        |
| výmena skúsenosti (starší<br>s mladšími, so zahraničím) | 0,2               | 0,19 | 0,92              | 3,17        | 1,31                  | 0,22           | 6          |
| zvýšenie stavu<br>vyšetrovateľov                        | 0,43              | 0    | 0,84              | 10,2        | 2,42                  | 1,21           | 15,1       |

Based on the results of the directed speech with prosecutors, judges, barristers and teachers, the method of the verifying of the testimony on the spot could be improved and more frequently used by providing better professional education and training programmes – 51.9 %, by providing experience to junior police officers by the senior ones, and by experience exchange with colleagues abroad – 22.2 %, a manual meant for investigators and their practicing model situations – 19.5 %, and interconnection of the theory and the practice in the form of consultations and deliberations 14.8 % (Bar chart 10).

## OUTPUTS FROM RESEARCH

The results of our research being presented and conclusions made have lead us to state that our hypothesis has been confirmed, namely that *the present carrying out of the method called the verifying of the testimony on the spot in the Slovak Republic does not bring expected results within the process of clearing up criminality*. In regard to the content of our research and its aims we have applied the principles and procedures of a qualitative research both in collecting and interpreting the data and in selecting the methods to be used. The results achieved by the classification method of qualitative data (interpersonal relations in carrying out the method of verifying the testimony on the spot) have given rise to a set of factors making it difficult to carry out the method. Subsequently, a relation analysis has made it possible for us to describe the reasons negatively effecting on the course and the results of the method called verifying the testimony on the spot. All the reasons are of more general nature and represent both the theoretical and the methodological starting points for the purpose of applying them under the conditions of police practice.

The method of the verifying of the testimony on the spot is often confused with interrogation, investigation experiment or reconstruction of a crime. We have tried to explain some of the tactical procedures of interrogation considered by criminalists as the method of the verifying the testimony on the spot. The principle of verifying the testimony on the spot, as a method of the criminalistic practice, consists, in our opinion, in comparing the previous testimony given and documented during an interrogation to the subsequent statement given in verifying the testimony on the spot at the objective and real scene of crime. The person giving testimony person demonstrates, in their own way, describes or shows the place, objects, situation, activity or the course of the crime directly at the scene of crime. The person giving testimony provides the investigator with the information obtained in a mediated way together with the source of the evidence and the description of circumstances under which the information was obtained.



Only reliable information can represent basis for the decision about a particular crime. It is not possible to unambiguously determine the quantity of the evidentiary information necessary for police officers to come to reliable and truthful conclusions because each crime is unique. That is why the quality of the evidentiary information always depends on a particular case. The verifying of the testimony on the spot represents, in criminalistic practice, source of information about a particular crime.

## ANALYSIS OF SELECTED ISSUES OF THE RESEARCH

Ad. 1 The method of the verifying of the testimony on the spot is, at the present time, considered to be an independent and specific method of the criminalistic practice and has its stable position in the structure of criminalistics that is separated from similar criminalistic and tactical methods, primarily those of the reconstruction of a crime, investigation experiment and crime scene examination. The process of the introducing the method of the verifying of the testimony on the spot is a historic and dynamic one and is conditioned by both the necessity of expanding scientific knowledge from different scientific disciplines but also by improving the legal regulation and last but not least by improving the professional knowledge of law enforcement bodies.

Ad. 2 The method of the verifying of the testimony on the spot is used, in criminalistic practice, to verify and complete the testimony and to obtain new evidence or its sources. The method makes it possible to verify truthfulness of the facts as stated in the testimony (place, object, crimes not reported or cleared up so far, facts connected to a particular place, whether the place is known to the person giving testimony as the result of their participation in the crime or whether the person giving testimony knows about the place only from hearing, or the facts mentioned by the person are thought up). The method also represents an effective way of how to verify and evaluate the individual investigation versions, as it often happens that police officers decide to use a lot of investigation versions they do not manage to verify during the investigation. It is just the verifying of the testimony on the spot that could help in such situations, however, at the present time this part of the method is being underappreciated.

Ad. 3 Analysing the knowledge based on the present level of criminalistics in connection with the method of the verifying of the testimony on the spot induces us to think that it is the method of criminalistic practice that, at the present time, is specified as one of the criminal procedure deeds (means of evidence) in the Criminal Procedure Code of the Slovak Republic. The method of the verifying of the testimony on the spot is a criminal procedure deed and is passed in Sec. 158 Criminal Procedure Code; the results brought by the method, namely knowledge of a particular crime as obtained by law enforcement body represent evidence under Sec. 119 subsec.2 Criminal Procedure Code.

Our research has clearly confirmed that the method of the verifying of the testimony on the spot has potential to become an effective criminalistic and tactical method to be used in investigating crimes as it is at the present time. However, it is necessary to point out that the use of this method in evidence of a crime is limited by the nature of the method itself. It is an empirical method consisting in effecting on a particular object.

Despite the stated facts, there are reserves in criminalistic practice in using the method. The reserves consist in:

1. The verifying of the testimony on the spot is not always carried out on a required professional level.
2. Despite its advantages, the verifying of the testimony on the spot does not represent a frequently used method.



3. The verifying of the testimony on the spot is confused with other criminalistic and tactical methods by some law enforcement bodies.

Ad. 1 The reasons of weaknesses in carrying out the verifying of the testimony on the spot are different, however we think that it is mostly about a conglomerate of various negative factors: insufficient professional education, time pressure, underappreciation in preparing the method, inexperience of police officers.

Ad. 2 Answering the question why the method of the verifying of the testimony on the spot is not used more frequently exceeds the content of this thesis. Despite of this fact, we would like to state a few notes of the issue. Investigation itself represents demanding work both from psychological and physiological points of view. Investigators usually work under time pressure as follows not only from the nature of their work (offenders are continually ahead of investigators), criminal procedure periods (e.g. 6 months period of custody) but also overstrain of investigators. The verifying of the testimony on the spot is a very demanding criminal procedure deed requiring extensive preparing and organising. It is therefore understandable, the method is not frequently used by investigator.

Ad. 3 The method of the verifying of the testimony on the spot is often confused with the crime reconstruction and investigation experiment. For some law enforcement bodies it is sometimes a problem (primarily with young and inexperienced investigators, authorized police officers and response officers) to distinguish among the criminalistic and tactical methods as there is a lot they have in common. The basic difference in comparison to other criminalistic methods is the way of carrying them out. In case of the verifying of the testimony on the spot, it is not necessary to reconstruct the situation of a particular crime and it is also not necessary to carry out an experiment activity. Voluntarily participation of a suspicious person, accused person, aggrieved person and a witness in carrying out the method is indispensable, in comparison to the possibility to replace those persons in case of an investigation experiment or a reconstruction model; this, of course, does not have to positively impact on the investigation of a particular crime. Confusion of the verifying of the testimony on the spot with other criminalistic and tactical methods is the result of insufficient professional education of law enforcement bodies.

In defining the substance of this criminalistic method we have come to the conclusion that though each verifying the testimony represents a process using several methods, without a comparing method we are not able to verify anything. What is possible to derive from this is that the basis of every verification (verifying the testimony) is a verification method. It is thus possible that in the process of the verifying of the testimony one will compare the information acquired about an object being verified to the primary information acquired about the object being verified or to the object itself. From this follows that the essence of the verifying of the testimony on the spot consists in comparing the testimony conducted earlier both to the momentarily real situation and its elements that are on a particular place voluntarily demonstrated or described by the person giving the testimony.

Based on comparing the individual definitions of the verifying of the testimony on the spot, the present understanding of the system of criminalistics and its methods in the Slovak Republic and the need for specifying and generalizing the notion of the verifying of the testimony on the spot we have decided to follow the essence of the verifying of the testimony on the spot:

Verifying the testimony on the spot is a specific criminalistic method that enables to acquire information relevant to both the criminalistics and the law by means of comparing the testimony as given at the first interrogation to the testimony given at the verifying of the testimony at the scene of crime, including objects, as demonstrated in a real situation.



Based on the analysis of the basic tactical principles, we can allege that the tactical procedure used in verifying the testimony on the spot must be legal, i.e. it must not be in contradiction with the principles of the Criminal Procedure Code. We have come to the conclusion that the following basic principles of the verifying of the testimony on the spot can be accepted:

- voluntary participation of the person whose testimony shall be verified;
- initiative of the person whose testimony shall be verified;
- verifying the testimony on the spot shall be conducted by one managing person;
- investigator's active control during the verifying of the testimony on the spot;
- watching the person giving testimony,
- verifying the testimony on the spot is an unrepeatable deed,
- presence of a bystander as a witness of the deed;
- verifying the testimony on the spot with several persons separately;
- vigilance.

This study intends to find out new knowledge and information about how the method of the verifying of the testimony on the spot tends to be used by police officers of the individual police services within the Police Force of the Slovak Republic and other cooperating units. The results of the research concerning the method of the verifying of the testimony on the spot have shown some problems and reasons of such adverse conditions of police practice. These problems can be summarized into three groups (METEŇKO, J., DANKOVIČ, M. 2009) :

1. Problems concerning police officers: insufficient knowledge of procedural process, behaviour of police officers in procedural deeds, underappreciation to prepare the verifying of the testimony on the spot, failure to inform barristers, absence to inform the person giving testimony before carrying out the procedural deed itself, and insufficient professional education.
2. System reasons (derived from managing and functioning the Police Force): valid legislation, high endurance, insufficient technical equipment, insufficient education system, absence of foreign experience, high rate of fluctuation of police officers, cooperation relations within the Police Force and the absence of specialization of police officers.
3. Problems concerning procedural parties: unwillingness of persons to give a testimony, ignoring the summonses, uncooperativeness of procedural parties, enforcing objections of bias, weaknesses in trying to get important information and covering up potential offenders.

Another question necessary to be solved at the present time is education within the department of the Ministry of Interior of the Slovak Republic. Model of a 1-year study at secondary police schools in the past was, in our opinion, optimal; the study contained the subject criminalistics that included the issue of the verifying of the testimony on the spot. The number of lessons meant for the subject was 138 lessons. As a result of the shortening the length of the study to 6 months, the number of lessons of the subject criminalistics was reduced as well, namely to 58 lessons, and the topic of the verifying of the testimony on the spot was excluded, including the other criminalistic and tactical methods except of crime scene examination. The subject law also had to give up the topic concerning criminal procedural law that included evidence within a criminal procedure, and individual means of evidence. At the present time police education should be extended to 8 months at secondary police schools. That is why it is necessary not to forget criminalistic and tactical methods to become again an indispensable part of the extended education of the subject criminalistics (the number of proposed lessons is 70).



The method of the verifying of the testimony on the spot must ensure objectivity, truthfulness, convincingness and demonstrativeness of results. This can be possible only by using the following tactical ways:

1. thorough analysis of the testimony and evaluation both of the course and the results of the previous interrogation of a suspicious person, accused person, witness or an aggrieved person; focus on detailed description of a place, objects, course of the crime, etc. makes it possible to find contradictions of the comparison to the reality during the verifying of the testimony;
2. thorough knowing the person giving testimony, their psychology, personal family environment, amount of property, etc.;
3. forming sufficient conditions for the purpose of well perceiving and seeing, i.e. climate, roads, situation, etc.;
4. in case of the verifying of the testimony on the spot meant for several persons, it is necessary to carry out the verifying independently with each person to ensure objectivity of the results of the method,
5. exclusion of psychical or physical effecting on the person giving testimony under negative influences, namely an investigator or other subjects;
6. detailed documenting individual facts and the whole process of the verifying of the testimony on the spot.

It is necessary to emphasize that the basic condition for the method of our research to become an effective means of evidence is that it must always be carried out thoroughly, in the sense of criminalistic principles and by following all the relevant criminal and procedural provisions.

### Efficiency of knowledge in police practice

The presupposed contribution of the results of our research can be divided into a narrower and a broader point of view. The results of the empirical research in the narrower sense could optimize the performance of the method of the verifying of the testimony on the spot. The results of the empirical research in the broader sense could be used in activities of the individual police units.

Based on the conclusions of the previous part of this study, we would like to submit the following proposals to improve and increase the use of the verifying of the testimony on the spot:

1. to incorporate the method of the verifying of the testimony on the spot into the curriculum and syllabus of the subject criminalistics for the proposed model of 8-month study at secondary police schools; to incorporate the method either separately or together with other criminalistic and tactical methods.
2. to prepare for police officers a brief handbook of criminalistic tactics that would include criminalistic and tactical methods including the verifying of the testimony on the spot. The handbook should contain brief characteristics of each of the mentioned methods and an instruction of how to carry them out. The enclosure of the handbook should contain instructions in compliance with the Criminal Procedure Code and a brief familiarizing with how to document the course and the results of the mentioned deeds. The handbook should be of smaller size and have a hard and washable cover for the purpose of its being used in the field.



3. To incorporate the topics of the verifying of the testimony on the spot, criminalistic experiment, and criminalistic reconstruction of a case, their characteristics, differences and ways of how to carry them out into professional education of police officers. Despite the methodological differences of the mentioned, the necessity to show the differences follows from the similarity of some of the elements of the methods (way of preparation, partially the way of how to carry them out and how to document them) that primarily the inexperienced investigators are not able to distinguish. It is also necessary to emphasize the circumstance that the importance of these criminalistic and tactical methods has been increased after the introduction of contradictory procedure at the contemporary criminal procedure.
4. To use the form of distance education, namely e-learning (similar form of education is being used in the courses for crime scene technicians), as part of professional education of police officers, or instruction and methodology seminars where an example of the verifying of the testimony on the spot could be presented, preferably the one that has already been solved in practice.
5. To use new possibilities and trends of how to document places of a crime, to use aerial photographs and maps from new servers.
6. One of the aims of this research has also been to find out the needs of police practice and, subsequently, process the proposals of *de lege ferenda* for the purpose of legislative activity (amendment of the Criminal Procedure Code in the part concerning means of evidence). The Criminal Procedure Code effective from 1 of Jan. 2006 (Act no 301/2005 Coll.) contains specific provisions concerning carrying out the testimony on the spot, namely in Sec.158. This legal regulation is certainly not ideal, however, it provides a very good legal framework for explaining how to carry out the verifying of the testimony on the spot in high quality, and is supported by the procedural law. Anyway, we think that our recommendations in favour of the change of or to harmonize Sec. 119 Subsec. 2 and Sec.158 the Criminal Procedure Code in the process of amendment thereof are correct, and this would be beneficial for law enforcement bodies. In connection with this change it is also necessary to amend the Article 65 of the regulation of the Ministry of Interior 2007, no 17 as amended.

By reason of the stated above we propose:

1. to amend the name of the Sec. 158 “Verifying the testimony at the scene of crime” to “Verifying the testimony on the spot”
2. and to incorporate into the Sec 158 subsec. 1 Criminal Procedure Code the terms “suspicious person, accused person, witness and aggrieved person” as follows:

#### Section 158

##### Verifying the testimony on the spot

1. Verifying the testimony at the scene of crime shall be carried out if it is necessary to do so and in the presence of the suspicious person or accused person or witness for the purpose of completing or verifying information necessary for the criminal procedure relating to the scene of the crime.
  2. The procedure of the verifying of the testimony on the spot must suitably follow regulations on an investigation experiment.
7. Based on the psychology knowledge of how to formulate a testimony, extended by one's own knowledge of how to investigate similar crimes, an investigator can guess probable reasons of errors and weaknesses in a testimony of a person both by verifying the testimony on the spot, and by means of procedures proved reliable to help to remove the weaknesses in the testimony. A person giving testimony is recommended:



- to give a chronological and maximally detailed testimony, to state all the facts and details, even if they find them not to be essential for the investigation;
- if the person giving testimony is not able to state the exact time and place of the crime, the investigator should start with what the person remembers well and exactly; on the basis of this the investigator can derive the continuation of the crime;
- to recall the whole crime, environment, weather, light of the crime, and their mental condition at the time of the crime;
- to try to differentiate their opinions from the really perceived situation;
- to try to describe the whole crime from the point of view of other participant in the crime (e.g. witness), such as what that one had to and could perceive;
- to state who can confirm the information provided by them, or to state the source of the information in case of the mediated information;
- to draw a particular object, to demonstrate the critical action (e.g. the way the offender attacked) etc. If they are unable to verbally demonstrate the mentioned;
- to understand the crime as a reason of a certain result or as a result of a particular reason;
- The investigator must not insist and force the person giving a testimony to state circumstances quickly if they cannot remember them; the investigator must take into account various types of memories.

8. By studying the specialist literature, we have found out that the method of the verifying of the testimony on the spot has not yet been divided based on particular criteria. We think that the person that was interrogated by a law enforcement body can participate in the verifying of the testimony on the spot (except a person exempt from the law enforcement bodies and courts)<sup>7</sup>. That is why, just like in case of interrogation that represents an obligatory presupposition of carrying out the testimony on the spot, we propose to classify that one as follows:

1. based on the procedural status of the person giving testimony;
2. based on selected criminalistic and technical points of view.

#### 1. Based on the procedural status of the person giving testimony.

It is possible to use this criterion when taking into account how the person giving testimony is involved in the verifying of the testimony on the spot or the process of clearing up the crime. Based on this, we can divide the verifying the testimony on the spot as follows:

- Verifying the testimony on the spot in case of a suspicious person (accused person). It is a person whose status is being changed in relation to the situation they are being found at the moment of giving testimony, i.e. before charge of accusation: after the accusation, a suspicious person becomes an accused person. Motivation of the person giving testimony should be the same as that person knows all circumstances of how the crime was being prepared, carried out or kept secret.
- Verifying the testimony on the spot in case of a witness. The purpose of this verifying of the testimony on the spot is to obtain relevant information on the crime as perceived by the witness, or to verify or to complete other pieces of information important for the criminal procedure and relating to a particular place.
- Verifying the testimony on the spot in case of an aggrieved person. The Criminal Procedure Code includes the aggrieved person into a group of witnesses. From the point of carrying out the testimony on the spot, it seems to be more suitable to include the aggrieved person into an independent category.

<sup>7</sup> See in greater detail: § 8 zák. č. 301/2005 – Trestný poriadok (Sec. 8 Act 301 – Criminal Procedure Code 2005).



- Verifying the testimony on the spot in case of an expert. From the theoretical point of view, it is possible to talk about the verifying of the testimony on the point in case of an expert, e.g. in connection with accomplishment of facts of a crime under the Section 347 – untrue expert's report or interpreting or translating providing untrue information.

## **2. Based on selected criminalistic and technical points of view:**

- Based on the age. Age influences, in an essential way, the basic psychic factors that effect on forming and decoding the memory trace or the course of the verifying of the testimony on the spot. That is why we distinguish statements of minors, juveniles, majors or old persons.
- Based on criminal experience. We distinguish the following kinds of verifying the testimony of a person: without previous criminal experience; unpunished but interrogated in the past; punished – habitual criminal. Depending on the criminal experience, it is necessary to decide for a suitable way (primarily in case of persons giving false testimony, or in case of self-incrimination).
- Based on mental health. Verifying the testimony on the spot can also be carried out with persons of low intellect, mentally ill persons having limited legal capacity. It is necessary to consider the verifying of the testimony on the spot in regards to the person and the circumstances of the crime, namely to consider whether the purpose of the verifying of the testimony on the spot can be achieved in a different way.
- Based on the physical or health condition. In specific cases it is necessary to carry out the verifying of the testimony on the spot with a person that is injured, ill, immobile, or a pregnant woman. In such cases it is necessary to consult a doctor.

There are other criminalistic and tactical points of view influencing the verifying of the testimony on the spot. For example endangered or protected witnesses or those kept in secret, where, depending on the seriousness of the case, it is necessary to consider the range and the nature of endangering the witness. Preparation and tactics of carrying out the verifying of the testimony on the spot must be adapted to the circumstances of the crime and the need to protect witness's life and health or their identity.

## **CONCLUSION**

The results of our research achieved by analysing the present condition of the verifying of the testimony on the spot as a criminalistic method, have shown the necessity of introducing new scientific knowledge that will not only generalize the present norms, methods and means, but also scientifically support the method of the verifying of the testimony, eliminate its imperfections and ensure its further development for the purpose of practical application of the method by the individual units of the Police Force.

Verifying the testimony on the spot has come into existence as a criminalistic method as a result of the actual need arising from the practice of criminalistics in the process of becoming familiarized with criminalistically relevant events. This is the reason why the method has been used by criminalists, though under various names and in various ways. Based on the critical analysis of foreign, Czechoslovak and subsequently Slovak criminalists, we can allege that the method of the verifying of the testimony on the spot has been constituted as a specific criminalistic method and represents a means of not only verifying and making testimonies objective but it is also a means of finding new evidence or its source.



We think that the definitions of the verifying of the testimony on the spot, as stated in the past, are overcome and they mostly represent a description of the content of the activity when applying the method. That is why we propose a new definition of the notion of the verifying of the testimony on the spot.

Verifying the testimony on the spot is a specific criminalistic method that enables investigators to acquire information relevant both to the criminalistics and the law by means of comparing the testimony as given at the first interrogation to the testimony given at the verifying of the testimony at the scene of crime, including objects.

Efforts of some criminalists not to acknowledge independence of the verifying of the testimony on the spot have been overcome. This fact becomes evident in the field of legislation as well because the verifying of the testimony on the spot has been passed and regulated by the Criminal Procedure Act both as an independent means of evidence and a procedural action. From the point of evidence, it is a means of evidence (Sec. 119 Subsec.2 Criminal Procedure Code) where the law enforcement body *de facto* verifies the testimonies of a suspicious person, accused person, aggrieved person, witness under specific conditions of a place, where a crime was committed or being prepared, or where an attempted crime was committed.

We are persuaded that, at the present time, when the criminalistic method of the verifying of the testimony on the spot, has been constituted and stipulated by the Criminal Procedure Code, it needs to be theoretically processed. In this regard, we propose to regulate Sec. 158 Criminal Procedure Code and Art. 65 regulation of the Ministry of Interior of the Slovak Republic 2007 no 17 relating to the verifying of the testimony on the spot, as those are in contradiction with the recommendations of criminalistics, primarily in the obligatory participation of the suspicious person, accused person, aggrieved person or the witness in the process of the verifying of the testimony on the spot.

Conclusions and recommendations concerning the results of the research relating to the police practice are summarized in the final part of this thesis. As the method of the verifying of the testimony on the spot is not classified by a division in criminalistics, we have tried to classify it considering its individual kinds based on the procedural status of a person giving testimony and based on the other criminalistic and tactical points. In transforming the knowledge of this thesis into practice, it is still necessary to overcome many problems. The knowledge, however, is necessary to be introduced into practice for the purpose of knowing the ways of committing increasingly sophisticated crimes.

Reflecting on the necessity of the investigation practice and the status of the theoretical processing the issue of the verifying of the testimony on the spot in the present Slovak criminalistics, we have come to the conclusion that only by unifying different opinions, introducing new knowledge and solving problems arising from applying the method under survey it is possible to improve the method for the purpose of its broader use in investigation practice and responsive familiarizing with particular cases.

We are persuaded that the method of the verifying of the testimony on the spot can be considered as one of the crucial elements for resolving criminal cases.

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