THE ROLE OF FORENSIC PSYCHOLOGY IN ENSURING AN EFFECTIVE INVESTIGATION OF CRIMINAL OFFENCES

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Summary

In the article I will discuss the matter of the role of forensic psychology in ensuring an effective investigation of criminal offences. In the introductory part of the paper, I will aim to present some of the relevant knowledge regarding the scientific field of forensic psychology. Mainly I will focus on the role of the personality of the perpetrator, or properly said the suspect or the accused, in investigating the crimes of which he is suspected and on the suitable ways (or we can say criminalistic tactics and methods) of leading an interrogation. In this article I will also deal with the concept of the positive obligations of the State, whose existence is implied in the case law of the European Court of Human Rights (hereinafter also referred to as the "ECtHR") and deduced from the European Convention on Human Rights (hereinafter also referred to as the "Convention"). In this part of the article at first, I will aim to clarify this concept to readers (or to audience). Then I will also briefly discuss the partial criteria of leading an effective investigation deduced from the articles of the Convention by the ECtHR case-law. The conclusions made in the article will be introduced in the presentation that I will deliver at the Congress.

Keywords: forensic psychology; forensic science; criminal offence; interrogation; effective investigation; positive obligations.

Introduction

Forensic psychology is one of the so-called applied psychological disciplines. A major contribution of forensic psychology for the legal sciences can be seen in a way it helps to recognize psychological phenomena and apply the acquired knowledge in a targeted effect on subjects at different stages of the process of law implementation (of a e. g. criminal procedure). This scientific field finds its use in various branches of law, from criminal law, through family law, to civil law. In this article, for obvious reasons, I will pay attention only to the use of forensic psychology in criminal law.

The main pillars of forensic psychology are the following areas of interest: the personality of the offender, the personality of the victim of crime and the basic psychological aspects of crimes, that find its use for example in cases of when the law enforcement authorities are conducting an interrogation. Netič, Netičková and Hajek also extend it in more detail to the partial forensic psychological disciplines, respectively their sub-areas that fall under them. For our purposes I will pay attention only to the sub-area regarding the topics of the personality of the accused (and the witness), the psychology of interrogation and testimony or the psychological profiling of the offender.

Psychology of the offender.

While criminological practice deals with a specific offender, forensic theory deals rather with large sets of offenders. Forensic psychology tries to reach to general conclusions through examination of the offenders and generalization that could be applied with a certain degree of probability to all offenders in the population. Criminology, on the other hand, is characterized by the examination of those relevant aspects of the offender that could ultimately contribute to the development of effective methods for combating crime in society.

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The role of psychology in the investigation of the offender and of the crime.

Various scientific disciplines are involved in the study of crime, precisely because it is an interdisciplinary problem. Criminology, for example, assesses all possible circumstances that incite criminal phenomena when examining crime. Forensic psychology, on the other hand, assesses this phenomenon to a certain extent in isolation, from the point of view of the individuals involved, i.e., victims, witnesses and, above all, the perpetrator. As already stated above, it can help the law enforcement authorities to find the most suitable ways (or we can say criminalistic tactics and methods) of leading an interrogation with different types of the offenders.

The focus of the offender’s psychology is primarily on the various peculiarities of the offender and his personality characteristics, especially in terms of the immediate motivation to commit a crime, psychological causes of crime, psychopathology, and the possibility of corrective-educational action, or we can say the rehabilitation of the offender. Previously, there were attempts to create a certain typology of offenders, but nowadays these tendencies are rather abandoned. Nevertheless, we can find at least some inspiration in these typologies. Their purpose is to enable psychologists and consultants to better understand and interpret the experience and behaviour of the offender and to assist law enforcement authorities in choosing the appropriate method and tactics of conducting investigative actions.9

Therefore, I will present only one typology, that is focused on the personality of the perpetrators and that has relevance to the field of forensic psychology, or criminal law as such. In my opinion, it is worth mentioning the (in the Czech Republic) well-known typology - Neumann’s typology - which distinguishes the offender into the following groups: socialized type, neurotic type, unsocialized (or defectively socialized), type with a different personality disorder than the antisocial, mentally inadequate type, deviantly socialized type and type with massive psychological disorder.10

Use of forensic psychology in interrogation.

Interrogation is considered a specific way of interpersonal communication and action. The testimony is then the result of communication between the interrogator (law enforcement authority) and the interrogated person. Knowledge from forensic psychology is intended to help law enforcement authorities in choosing a suitable method of interrogation. The sub-areas of interest can be divided as follows:

- prerequisites for successful interrogation by the investigator - these include ensuring a suitable environment and atmosphere during interrogation or choosing adequate techniques, and these can be further divided into the following techniques:
  - halo effect;
  - cognitive schemes;
  - idiosyncrasy;
  - countertransmission;
- factors influencing the successful course of the interrogation by the interrogated person - for the person being interrogated, the interrogation will usually be a very stressful situation that threatens their ego; for this reason, the interrogator should consider that some of these following defensive reactions of the interrogated person may appear:
  - increased self-centeredness;
  - aggressiveness;
  - identification with the pattern;
  - projection;
  - rationalization;
  - withdrawal into yourself;
  - regression manifestations or tearfulness.
- credibility of the testimony - it follows from the determination of the correspondence of what the interrogated person describes how the event took place; we distinguish it further into general and specific.11

While within forensic psychology as one of fields of the criminalistics sciences - the attention is paid to possible methods of conducting interrogation and psychological mechanisms, within general criminology the attention is paid on a wider scale to the examination of appropriate interrogation strategies and tactics.12

Following the above stated, Spurný deals with interrogation in the forensic concept, which ranks it among the forensic methods and defines it as a demanding creative process aimed at obtaining a true and complete testimony about the investigated event. He also refers to Musil, Konrád and Suchánek, who define interrogation as: „a forensic method by which criminalistic and legally significant information is obtained by law in the form of testimony from memory traces contained in the consciousness of the persons being interrogated, in strict compliance with the rights and obligations of the interrogator and the interrogated. The aim of questioning is to obtain complete and credible testimony to establish the facts of the case, about which there is no reasonable doubt“13

Spurný also deals with the individual tactics of conducting interrogations and the criteria for categorization of interrogations. These include the criterion of the relationship of interrogated person to his own testimony, on the basis of which he divides the interrogations into the following sub-

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categories: the interrogation of persons who want to tell the truth and whose intention coincides with the consequence that has occurred; the interrogation of persons who want to tell the truth but the intention does not coincide with the consequence that has occurred; and the interrogation of persons who do not want to tell the truth. Other criteria are then the procedural status of the person being questioned, their age or mental or physical condition.  

He also sees the practical application of forensic psychology during interrogation in the form of recommendations on how to recognize, explain and influence the experience and behaviour of the participants in the interrogation process. According to Spurný, the purpose of using psychological knowledge during interrogation is to gain the ability to understand psychological phenomena that takes place in the heads of the persons involved. From the point of view of forensic psychology, he understands interrogation both as the interaction of the interrogator and the interrogated person in specific conditions of the ongoing interrogation situation and as the process of forming the testimony as a result of such interaction.  

For the interrogation to be successful, it is necessary that it meets certain prerequisites. According to the authors of the publication "Základy soudní psychiatrie a psychologie", these are the basic principles of forensic psychiatry and psychology, that should be followed for the interrogation to be successful:

- the interrogation should take place in a suitably chosen environment, at a suitable time, without interruption and without haste;
- the interrogator should prepare in advance to establish contact in direct proportion to the particularities of the interrogated person;
- the interrogator should consider in advance possible variants of answers to the questions and adjust their order accordingly, questions should be clear, concise, and clearly asked;
- the interrogator should speak clearly, distinctly and with a calm tone of voice;
- the interrogator should be patient, he should not be provoked by the evasive manoeuvres of the interrogated person or by his "running-in";
- the interrogator is to respond promptly to any unforeseen answers;
- the interrogator should consider a certain inaccuracy of the interrogated person's memory and not automatically consider it a false statement;
- the interrogator should also consider the dependence of the information communicated on the opinion of the interviewee and
- the interrogator also should avoid hasty interpretations solely based on the sympathy or antipathy he feels towards the interrogated person.  

Right to an effective investigation.

For the purposes of conducting effective criminal investigations, it is not sufficient to only apply appropriate psychological methods of interrogation and investigation, but certain legal criteria for investigation must also be met. An effective criminal investigation should be carried out primarily in cases of intentional death of a person or intentional use of force resulting in death. However, the Czech legal system penalizes as a criminal act leading to the death of another not only the cases of an intentional form of such conduct, but also the cases of a negligent form. If we were to refer the injured party only to civil proceedings, we would weaken the effectiveness of the protection of the right to life in practical terms. The Constitutional Court of the Czech Republic (hereinafter also referred to as the "Constitutional Court") states that it is necessary to investigate effectively even deaths that at first glance appear to be caused by negligence, in order to be able to exclude intentional culpability. The right to an effective investigation then has its justification not only in relation to the person against whom the proceedings are being conducted, but also in relation to the person of the injured party. The concept of the right to an effective investigation has its origins enshrined in the case-law of the European Court of Human Rights. It is not possible to simply infer this right, which in a way also follows from the principles of legality and the principle of officialness enshrined in § 2 para. 3 and 4 of the Code of Criminal Procedure, as a rule from the diction of procedural codes, in particular the Code of Criminal Procedure, since it is not a strictly typical law of a procedural nature. As Grivna and Šimánová state, it is "rather a procedural aspect of material rights (the right to life, the right not to be tortured, the right to personal liberty and human dignity, and others), which is derived from the State's obligation to ensure effective protection of these rights. The right to an effective investigation never stands on its own. There must always be some material right behind it."  

The right to an effective investigation has been pursued from the case-law of the ECtHR through time to the case-law of the Constitutional Court, although the Constitutional Court was originally rather reticent about this concept. The Constitutional Court infers in its case-law that such right always embodies a person who has been harmed by a criminal offence, suffered material or non-material damage, or one at whose expense the offender has enriched himself precisely through the crime committed. However, the obligation to

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15 Ibid.
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Conclusion

The aim of procedural legislation is, in any case, to be the greatest possible prevention of harmful conduct, the active identification of the person who committed such conduct, the clarification of the issue of culpability and possible punishment in a humane manner. With these objectives in mind, the State should adopt adequate legislation, both substantive and procedural.29

For these reasons it is very important to lead an effective investigation of the offences and also to respect ECtHR case-law regarding such matter. The forensic psychology and its knowledge applied in law enforcement authorities’ practice, in my opinion, helps with ensuring an effective investigation within the meaning of mentioned case-law. I found a real importance of applying such principles and knowledge especially regarding a continually strengthening standard of human rights and regarding the elimination of minimalization of stigmatization of the offender. In my point of view, such approach also helps to maximize the effectiveness of the interrogation and the investigation leading to successful detection of the perpetrator of the crime and fulfillment of the purpose of criminal law.

26 The breach of the positive obligation to initiate an ex officio investigation occurred for example in ECtHR judgement from 9th of July 2019 in case of Eremidašková v. Czech Republic.
27 Judgement of the ECtHR from 16th of April 2012 in case of Eremidašková a Pechová v. the Czech Republic.
29 Ibid, pp. 35-36, [cit. 20. 4. 2022].
Straipsnyje aptariamas teismo psichologijos vaidmuo užtikrinant veiksmingą nusikalstamų veikų tyrimą. Įvadini­je darbo dalyje pateikiamos kai kurios aktualios žinios apie teismo psichologijos mokslą. Daugiausia dėmesio skirta įtariamojo ar kaltinamojo atveju nusikalstamų veikų tyrinėjimui, kuriame jis įtaria, ir tinkamus tyrimo būdus (arba kriminalistikos taktiką ir metodus) tyrimo metu. Šiame straipsnyje taip pat nagrinėjama valstybės pozityvų įsipareigojimų samprata, kuri numatyta Europos Žmogaus Teisių Teismo praktikoje ir išvedama iš Europos konvencijos dėl žmogaus teisių. Straipsnyje aškinama ši sąvoka, aptariami veiksmingi vadovavimo tyrimui kriterijai, kurie yra aprašyti Konvencijos straipsniuose ir EŽTT praktikoje.

Raktiniai žodžiai: teismo psichologija, teismo ekspertizė, kriminalinis nusikaitimas, tyrimas, efektyvus tyrimas.