

System of Using of the Criminalistics Method in Slovakia to Verify Testimony on the Spot

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Abstract. *The primary goal of the study is to conduct analyses, on the basis of theoretical and empirical knowledge to describe the level of using and processing the verifying testimony on the spot in the Slovak criminalistics. For this method, it is typical that it is less frequent for use in investigative practice. The research, which was significantly larger than the results published here, shows that there is relatively little knowledge about this method among the police. Another important knowledge from research is the interest in the method in general, but its immediate application can be imagined by considerably fewer police officers. The secondary goal was to find out lacks and troubles in practical applying the verifying testimony on the spot, in the process of investigating crimes in Slovakia last years. The specific part of the study and research is also devoted to the history of the development of the concept and content of the method. These are very important parts of the study. They help to understand not only the formal legal definition in the legal regulation but also the true nature of the method and its structure. The author makes short concepts to propose changes necessary for effective using the verifying testimony on the spot in the Slovak police practice however mainly in the process of investigation. This study is a partial output for research výsk. 151.*

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Introduction

The historical period was marked by various forms of physical violence of and non-objective procedures of people who were responsible for justice and punishment of accused persons. However, those historical characters cannot be reproached now, as they followed the principles valid at that time, primarily the generally recognised rule, namely “confessio regina probationum” (Confession is the queen of evidence). Criminalistics went through a very long period of development along with the law, especially with criminal law. Again this aspect of many criminalistics methods are not describe by criminal law.

Many criminalists enforce the opinion that it is essentially not important what the name of a method or an investigative deed is, what is important is the achievement of the investigation aim, namely acquisition of relevant information about a particular crime and an offender.

Discussions on the notion of the special methods, their contents, principles and rules in carrying out the individual criminalistics methods are perceived as academic debates that are far removed from the practice of criminalistics.

We will try to shortly describe the development of the opinions about the notion and the substance of the method called the verifying of testimony on the spot

as a criminalistics method in both the Czechoslovak and, subsequently, Slovak criminalistics including in respect of its legal regulations.

Historical analyses for the verifying of testimony on the spot

The development of criminalistics methods in Slovakia in the old times up to the breakup of the Austrian-Hungarian monarchy, 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 criminalistics methods was being determined by the police and gendarmerie centres in Prague. The creation of Czechoslovak criminalistics can be connected with the creation of the Czechoslovak Republic (28 Oct. 1918). Czechoslovak criminalistics took up the experience of policemen of Austria-Hungary. At the same time, the criminal laws of the Austrian empire were passed.¹

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), *The tactics of criminalistics*, (Kriminálna taktika, 1932) or *Education system in the field of criminalistics* (Systém kriminalistického vzdelávania, 1935). In the aforementioned books, the authors tried to summarise and systematically develop, primarily, the practical side of criminalistics without failing to mention the theory of criminalistics as well. Many 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 1931.²

In 1932, an important publication called *Investigation methods of the security service* (Vyšetrovacie metódy bezpečnostnej služby) by Vítězslav Čelanský was published. The author of the book repudiates the so-called criminalistics and technical methods and means of evidence, and puts the main stress on the confession of an offender. A principle was being enforced that it was necessary to interrogate an accused person by using many methods of interrogation and in order 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 criminalistics technique and tactics. It is possible to say 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).³ However,

¹ Říšský zákon 119 zo dňa 23.5.1873 (Imperial Act 119/1873). Československá republika s novelami recipovala zákonom číslo 11 Sb. zo dňa 28.10.1918 (The Czechoslovak Republic amended Act no 11 Coll., on 28 Oct 1918).

² Straus J, Dějiny československé kriminalistiky slovem i obrazem — do roku 1939. Praha: Police History 2003, p. 197.; Porada V, *Kriminalistika*. Bratislava: IURA EDITION, 2007, p. 604.

³ 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

in the work of the above mentioned foreign authors we do not find any signs of the method of our study, namely the verifying of testimony on the spot.

As early as after the World War II., it is possible to register essentials, as to the content and the form, similar to the method called verifying testimony on the spot. Within the practice of the Czechoslovak criminalistics, such a method/action that is very similar to the method of verifying of the testimony on the spot, namely by using particular tactics, came into existence earlier than the verifying of such testimony became a process of criminalistics as a partial method and before it was mentioned in the specialist literature on criminalistics for the first time.⁴ The first, though, rather unclear and modified appearance of verifying of the testimony on the spot was in the publication called *The Essentials of Criminalistics* (Základy kriminalistiky) by B.Nemec⁵ where the verifying of the testimony appeared as “verifying of different circumstances and facts at the scene of crime”. The author tried to describe criminalistics 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 testimony on the spot, at that time still called „crime scene response “. The author of the article, a Soviet criminalist S. Stepičev⁶, dealt with the 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 deed of investigation that differs in the essentials and tactics in carrying it out from other types of investigation,⁷ namely crime scene inspection, interrogation on the spot and investigative experimentation⁸.” The author of the book also

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, who, at the end of his life, became founder and chief of the organisation called the *Sûreté* (1812–1827), the first modern police organisation 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).

⁴ Venhač R, *Prověrka výpovědi na místě* (Verifying the testimony on the spot). Praha: Kriminalistický ústav VB, 1987, p. 54.

⁵ Nemec B, *Základy kriminalistiky* (Essentials of criminalistics). Praha: MV HSVB, 1954, p. 335.

⁶ Stepičev S, *Výjazd na miesto ako taktický spôsob previerky dôkazov* (Crime scene response as a tactical way of verifying the evidence). [in:] *Kriminalistický zborník* (Criminalistik proceedings), 1957, no 12, pp. 751 — 757.

⁷ Lisoň M, *Kreovanie vedného odboru „operatívne poznanie“ v systéme policajných vied*. [in:] *Policajná teória a prax*, Roč. 19, č. 1 (2011), pp.71–86.

⁸ Laca M, *Komparácia využívania konfrontácie vo vybraných krajinách Európskej únie*, [in:] *Právni Rozpravy 2016: recenzovaný sborník příspěvků z mezinárodní vědecké konference: mezinárodní vědecká konference oblasti práva a právních věd — Právni rozpravy 2016 s podtitulem „Teorie, vývoj, praxe práva“: ročník VI.: 22–26 února 2016: Hradec Králové, Česká republika. Hradec Králové: Magnanimitas, 2016, p. 40, 43; Samek M, Bačíková I, Krajníková M, *Rekognícia v kriminalistickej teórii a praxi*, 1. vyd. Bratislava: Akadémia Policajného zboru v Bratislave, 2015, p. 165.*

points out the differences in use of the term of verifying of testimony on the spot and states that: "The fact of the non-uniform use of the term results in different ways of both carrying out the verification of the evidence and procedural regulations of this method of the verification of the evidence".

The author at the same time describes the content of that method of verifying testimony and specifies situations where such a method of verifying the testimony can be used:⁹

- 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 evidence obtained is contrary to their testimony, the plea must be confirmed by objective facts;
- when it is necessary to verify facts as stated in the testimony of witnesses and aggrieved persons;

That period also includes the beginning of forming and theoretical processing some of, at that time new and not theoretically processed, methods of criminalistics that are represented by e.g. investigative experiment, reconstruction of an event and the so-called crime scene response¹⁰. Their beginnings, however, were marked by certain inaccuracies as, in general, is usual at the beginning of obtaining knowledge. The inaccuracies not only had, but still have, a negative impact both on forming the criminalistics practice¹¹ and thinking within the field of criminalistics and also on the quality of legal regulations in the process of proving guilt. Many specific opinions, including inaccurate ones, can be observed until the 1990s.

The division of Czechoslovakia into two independent parts and the stormy transformation of 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 up until then uniform Czechoslovak criminalistics was divided into two parts which went their own ways. New institutions were formed that became a basis for the development of criminalistics both as a science and practice. In the Slovak Republic the Forensic science institute and the Police Force Academy in Bratislava came into existence, whereas in the Czech Republic it was 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 previously 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 testimony on the spot as an independent criminalistics method, and the way in which it has passed in the Criminal Procedure Codes of both the countries.

⁹ Nemeč B, *op.cit.*

¹⁰ Dankovič M, Zuščin V, Vyhľadávanie, dokumentovanie a zaistovanie vybraných druhov kriminalistických stôp pre potreby objasňovania mravnostných trestných činov, [in:] *Mravnostná kriminalita ako spoločenský fenomén a možnosti jej kontroly: zborník vedeckých štúdií a odborných článkov z medzinárodnej virtuálnej vedeckej konferencie: Bratislava, 20. 3. 2015*. Bratislava: Akadémia Policajného zboru v Bratislave, 2015, p. 210.

¹¹ Pajpachová M, Pribišová D, Teambuilding a jeho využitie pri zlepšovaní sociálno-psychologickej atmosféry v policajnej organizácii. *Policajná teória a prax*, 2015, Roč. 23, č. 4, p. 24.

State of the verifying of testimony on the spot and possibilities of its use

The aim of the research Task "výsk. 151" has been to carry out a scientific analysis of the level of applying and verifying of testimony on the spot as a criminalistics method in the Slovak Republic¹². The comparison of the theoretical level is critically compared to the practical level of applying the method¹³ in clearing up crimes and elaborating an effective system of recommendations for the purpose of improving police work, primarily investigation.¹⁴

Pre-research of the method mentioned¹⁵ was followed by a questionnaire which represents the most common method of collecting empirical material. Subsequently, research of selected respondents was conducted. After the evaluation of the research, the authenticity of the empirical knowledge was compared and interpreted in relation to the main and partial hypotheses. The results of the research was 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. The content of data obtained during structured interviews speech with 27 respondents was analysed. 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).¹⁶

The basic group was composed of police officers of: the District Headquarters of the Police Force, Regional Headquarters of the Police Force and other units

¹² Viktorová J, Bango D, Palarec J, Pažitka J, Mašlany F, Blatnický J, Vajzer L, Kern M, Vyšetovanie vybraných druhov trestných činov. Bratislava: Akadémia Policajného zboru v Bratislave, 2007, p. 346.

¹³ Tremmel F, Fenyvesi C, Herke C, Hautzinger Z, Mészáros B, The role of criminal recording in the criminalistics, involving DNA data base, [in:] *Pokroky v kriminalistike 2005: zborník z medzinárodnej konferencie konanej v dňoch 26.-28.6.2005*. Bratislava: Akadémia Policajného zboru v Bratislave, 2005, p. 323.

¹⁴ Meteňko J, Dankovič M, Previerka výpovede na mieste ako kriminalistická metóda: Záverečná správa z výskumu. Bratislava: Akadémia PZ (Police Force Academy) — Katedra kriminalistiky a forenzných disciplín (Department of criminalistics and forensic sciences). 2009, p. 83. VÝSK. 151.

¹⁵ Dankovič M, Niekoľko poznámok ku kriminalisticko-taktickej metóde „previerka výpovede na mieste“, [in:] *Pokroky v kriminalistike 2009: zborník z medzinárodnej vedeckej konferencie konanej dňa 9. a 10. novembra 2009 na Akadémii Policajného zboru v Bratislave*. Bratislava: Akadémia Policajného zboru v Bratislave, 2010, p. 89.

¹⁶ Kloknerová M, Poznatky z výskumu prevencie kriminality mládeže realizovanej Policajným zborom. *Policajná teória a prax*. 2006, roč. 14, č. 3, p. 64.

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's levels.

Selected group:

V — 80 investigators and authorised 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.

The 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 largest number of 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) specialising in criminalistics and criminal law. The combined group was formed randomly with an assumed territorial specification and consisted of judges and barristers specialising in criminal law and using the results of the verifying of 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

With 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.¹⁷ The methodology of the research has been conditioned by both the object of the research and the aim of the research conducted.¹⁸

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 generalisation, both in theoretical processing the knowledge and in evaluating the empirical research;
- Structured interview method;
- Questionnaire method;
- Statistical method (in processing the results);
- Method of generalising the experience.

Selected results of the research

From the point of view of the theoretical knowledge and practical skills, the issue researched concerns the ability to manage (planning, carrying out and documenting) the verifying of testimony on the spot as regards police practice. Up to 47% of the respondents think that 2 years of police practice is enough to manage the verifying of 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 length mentioned of their police practice is sufficient enough to carry out verifying of the testimony on the spot in a highly qualitative way (Bar chart 1).

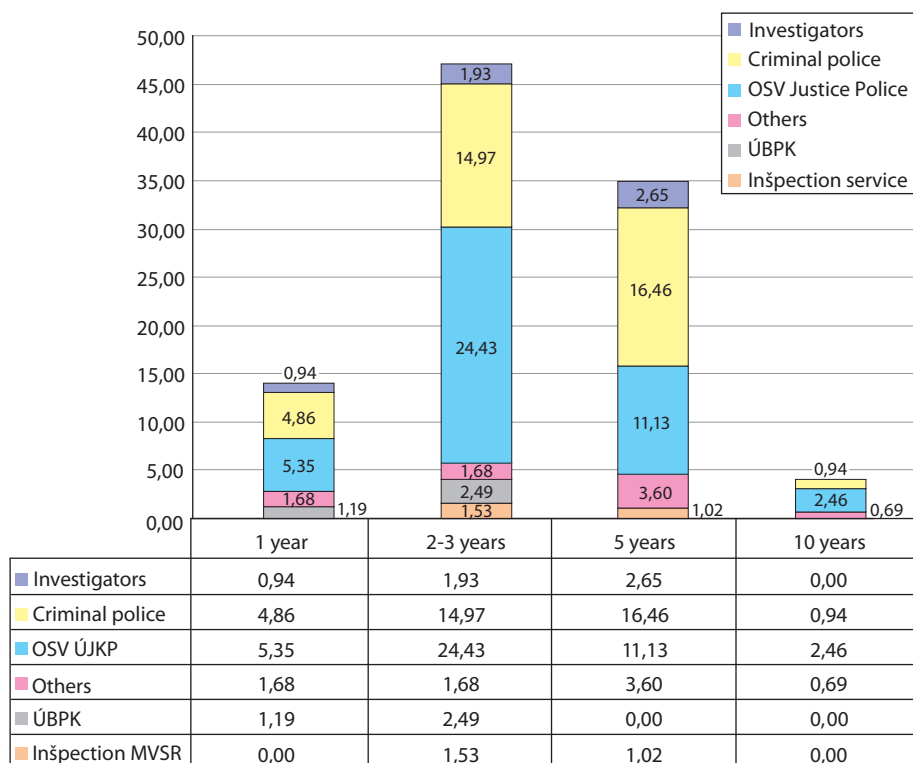
The frequency of the use of verifying of the testimony on the spot by police officers shows that using the method depends on the procedural position of the person with whom verifying of the testimony on the spot is being carried out.

In case of the aggrieved person, 13,9 % of the respondents have never used the method of 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

¹⁷ Kloknerová M, Preventívne činnosti policajtov zamerané na mládež. In *Kriminalistická stopa ako teoretický a praktický problém: zborník z medzinárodnej konferencie konanej dňa 26. júna 2006 na Akadémii Policajného zboru v Bratislave*. Bratislava: Akadémia PZ v Bratislave, 2006, p. 255.

¹⁸ No research conducted in connection with the verifying of 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. effectiveness of specific interrogation techniques (Anglo-American sources) are known in foreign literature. However, the Anglo-American system insists on interrogation and crime scene inspection. One of the methods examining truthfulness of the testimony is represented by a polygraph (lie detector).

Bar chart 1. Length of practice for managing PVNM

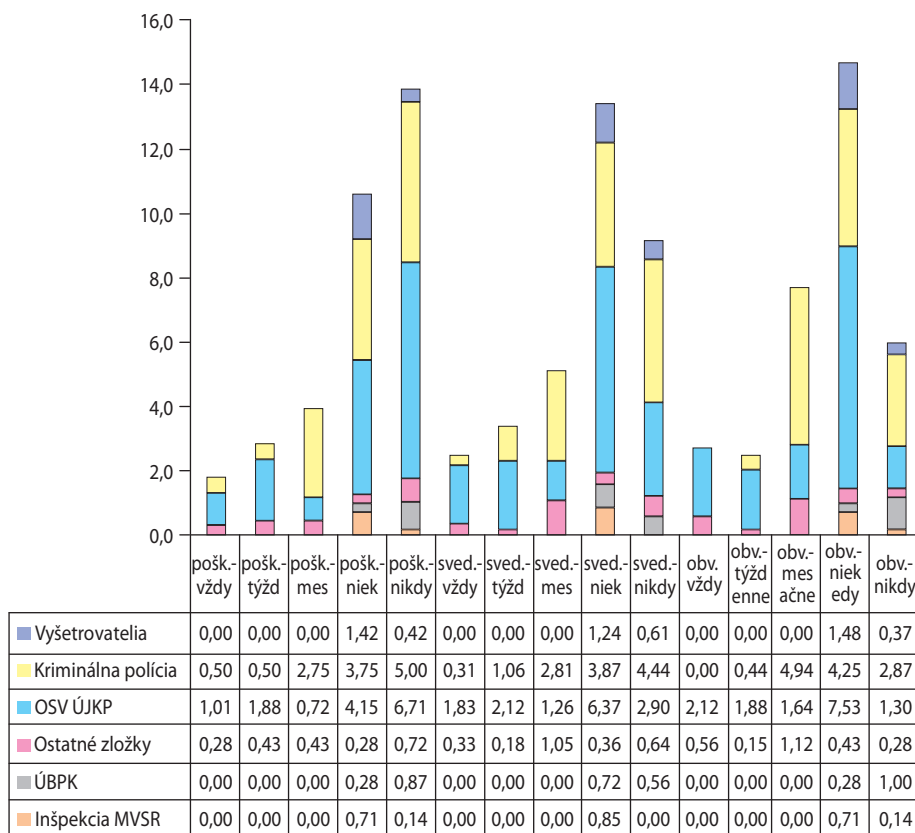


sometimes, whereas 9,1% of the respondents never use the method. The frequency of using the method is the highest with accused persons. The method is sometimes carried out by 14,7 % of the respondents, used once a month by 7,7 % of the respondents, and has never been used by 6,0 % of the respondents (Bar chart 2).

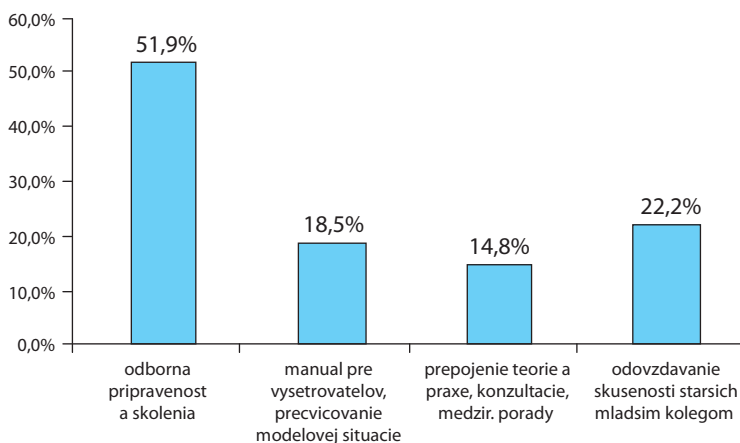
The method of verifying of the testimony on the spot is the most frequently used in situations when the accused person (in committing the crime) was moving to various places, or when it is necessary to use the method for the purpose of finding and seizing the objects the accused person stole and hid in one or several places. The method of verifying of the testimony on the spot is most frequently used in cases when it is necessary to document the consequences of the committed crime.

Based on the results of structured interviews with prosecutors, judges, barristers and teachers, the method of 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 the provision of experience for junior police officers by senior ones, and by exchange experience with colleagues abroad — 22,2 %, a manual meant for investigators and their practice in model situations — 19,5 %, and interconnection of the theory and the practice in the form of consultation and deliberations 14,8 % (Bar chart 3).

Bar chart 2. Frequency of using PVNM (colour indicators are same as in first table)



Bar chart 3. Possibilities for better and frequently using PVNM



Conclusion

The partial results of our research presented here and conclusions made have lead us to state that the method called verifying of the testimony on the spot in the Slovak Republic does not produce expected results within the process of clearing up criminality. With regard to the content of our research and its aims we have applied the principles and procedures of 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 related analysis has made it possible for us to describe the reasons having a negative effect on the course and the results of the method called verifying the testimony on the spot. All the reasons are of a 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 verifying of the testimony on the spot is often confused with interrogation, investigative experimentation or reconstruction of a crime. The principle of verifying the testimony on the spot, as a method of the criminalistics 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 personal testimony 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. This study is partial output for research v ýsk. 151.

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Streszczenie. Głównym celem badania jest przeprowadzenie analizy na podstawie wiedzy empirycznej i teoretycznej w celu opisanego stopnia wykorzystania i przetwarzania weryfikowanych zeznań na miejscu w słowackiej kryminalistyce. Ta metoda nie jest powszechnie stosowana w praktyce dochodzeniowej. Przeprowadzone badanie, które było pierwotnie znacznie obszerniejsze niż rezultaty opublikowane poniżej, ukazuje, że nie ma dostatecznie dużej wiedzy na temat tej metody wśród policjantów. Inną ważną informacją (wiedzą) pozyskaną z badania jest ogólne zainteresowanie tą metodą, lecz jej natychmiastowe wdrożenie może dotyczyć znacząco niewielkiej liczby policjantów. Kolejnym celem było uzyskanie wiedzy na temat braków i problemów związanych z praktycznym wdrożeniem metody — weryfikacji zeznania na miejscu — w procesach dochodzeniowych na Słowacji w przeciągu ostatnich lat. Istotną część studium i badania została poświęcona historii rozwoju koncepcji i zakresu omawianej metody. Są to bardzo istotne części studium. Pomagają one zrozumieć nie tylko formalną, legalną definicję w regulacjach prawnych, ale również charakter metody i jej strukturę. Autor przywołuje kilka rozwiązań w celu dokonania koniecznych zmian dla efektywniejszego wykorzystania weryfikacji (oceny) zeznań na miejscu w praktyce policyjnej na Słowacji, lecz głównie w procesie dochodzeniowo-śledczym. Studium to stanowi częściowy rezultat badania 151.

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Резюме. Основной целью исследования является проведение анализа на основе эмпирических и теоретических знаний для того, чтобы описать степень использования и обработки проверяемых показаний на месте (связанном с исследуемым событием) в словацкой криминалистике. Этот метод не является широко используемым в следственной практике. Проведенное исследование, которое изначально было намного обширнее чем результаты опубликованные ниже, показывает, что знания сотрудников полиции об этом методе недостаточны. Важной информацией, полученной в ходе исследования, является общий интерес к этому методу, но его немедленное осуществление может касаться только очень небольшого числа полицейских. Следующей целью было получение информации о недостатках и проблемах, связанных с практической реализацией метода — проверки показаний на месте — в Словакии в течение последних лет. Существенные части настоящей работы и исследований были посвящены истории развития концепции и объему обсуждаемого метода. Они помогают понять не только формальное, законное определение этого метода в правовых регулировании, а также характер метода и его структуру. Автор ссылается на несколько способов, целью которых является внесение необходимых изменений для более эффективного использования проверки показаний на месте в полицейской практике в Словакии, но главным образом в рамках следственных действий. Данная работа является частичным результатом исследования 151.