

Studies on the effectiveness of the detection process when conducting forensic evidence by inspection in cases of killings in Poland

Badania efektywności procesu wykrywczego oględzin w sprawach zabójstw w Polsce

I. Introduction

In the Polish legal system, the conducting of forensic evidence by inspection is defined as the most important procedural action (Articles 207-210 of the Polish Code of criminal procedure - Statute of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555 with later amendments))¹. At the same time it is also a forensic action (as it requires using forensic techniques²) carried out at the scene of the event. The objective of this action, conducted when needed³, is to learn about the topography of the place of the event, preserving

¹ K. Juszka, *3D scanning applied to implementing the principles of conducting forensic evidence by inspection* (in:) E. Gruza (ed.), *Faces of contemporary forensic science. A jubilee book of Professor Hubert Kolecki*, Warsaw 2013, p. 117 [in Polish]; K. Juszka, *Quality of forensic inspections in selected publications of Józef Gurgul* (in:) J. Wójcikiewicz (ed.), *Iure et facto. A jubilee book presented to Dr. Jozef Gurgul*, Cracow 2006, p. 49 [in Polish]; K. Juszka, *The effectiveness of conducting forensic evidence by inspection* (in:) I. Sepiolo (ed.), *An interdisciplinary approach to research in penal sciences*, Warsaw 2012, p. 385 [in Polish]; H. Gross, *Handbuch Für Untersuchungsrichter als System der Kriminalistik*, Monachium-Berlin-Lipsk 1922, p. 162; A. Lichem, *Kriminalpolizei*, Graz 1935, p. 171.

² S. Pikulski, *Fundamental issues of forensic tactics*, Białystok 1997, p. 14-15, 17-18 [in Polish]; K. Juszka, *Quality of forensic procedures*, Lublin 2007, p. 274-330 [in Polish]; K. Juszka, *Principles of forensic inspection*, „Przegląd Policyjny” 2009, no. 4, p. 47 [in Polish].

³ P. Hofmański (ed.), *The code of criminal procedure. Comments to Articles 1-296*, Warsaw 2011, p. 1185-1186 [in Polish]

the state of the subject of inspection, revealing and securing sources of evidence for the court (Article 297§1 of the Polish Code of criminal procedure), allowing conclusions to be drawn about the perpetrator and/or his/her *modus operandi*⁴. Another objective of this action is the identification i.e. finding – on the basis of comparative studies – of evidence (secured at the place of inspection) and the comparative material, in particular whether the examined materials are identical and whether they manifest group or individual features⁵.

T. Hanausek defined the fundamental factors affecting the process of detecting the perpetrators of offences, and stressed that for the potential effectiveness of the process they should depend on:

- establishing, within the framework of planning of the crime detection process, a certain sequence of actions, which will then be observed in the course of the implementation of the process;
- the maximum quality of these actions, the intensity and content of the information stream, stimulating the detection process as a whole, as well as its particular segments or stages;
- the set of objective circumstances pertaining to the event whose perpetrator is to be detected as a result of a given detection process, as well as the kind of the event and, sometimes, the characteristics of such a perpetrator⁶.

According to T. Kotarbiński, effectiveness is a positive feature of activities which result in positively assessed effects, irrespective of whether it was intentional (successful and effective action) or unintentional (effective action)⁷. Any given forensic action is effective when it implements the objective that the legislators wanted to achieve proposing the execution of the action at certain stages of the

⁴ T. Hanausek, *Forensic science – a book on the methods of investigation*, Cracow 2009, s. 84. [in Polish]; T. Hanausek, *An outline of forensic tactics*, Warsaw 1994, p. 118-121 [in Polish]; T. Hanausek, *An outline of the forensic theory of detection, part II*, Warsaw 1987, p. 103-104 [in Polish]; T. Hanausek, *Developmental perspectives for forensic procedures associated with examining the scene of an event*, "Nowe Prawo" (1971), no. 7-8, p. 1139 [in Polish]; E. Gruza, *Forensic psychology for lawyers*, Warsaw 2009, p. 240 [in Polish]; S. Pikulski, *Fundamental issues...*, op. cit., p. 136; K. Juszka, *Forensic version*, Cracow 1997, p. 160 [in Polish].

⁵ T. Hanausek, *Forensic science...*, op. cit., p. 40-41 [in Polish]; T. Hanausek, *Forensic identification based on modus operandi*. *Forensic studies*, "Studia Kryminologiczne, Kryminalistyczne i Penitencjarne" (1991), no. 21, p. 278 [in Polish].

⁶ T. Hanausek, *An outline of the forensic theory of detection, part II...*, op. cit., s. 94 [in Polish]; T. Hanausek, *An outline of forensic tactics...*, op. cit., p. 101-102 [in Polish].

⁷ T. Kotarbiński, *Some issues of pragmatic epistemology* (in: *Issues of effectiveness in scientific research* 26 November 1970, Warsaw 1971, p. 79 [in Polish], references from: T. Pszczołowski, *A little encyclopedia of praxeology and theory of organization*, Wrocław, Warszawa, Kraków, Gdańsk 1978, p. 61 [in Polish].

judicial proceedings⁸. Therefore, detecting the perpetrator of a felonious act is the aim of activities undertaken by prosecuting agencies, and providing proof is the measure of the effectiveness of the actions undertaken. Various authorities participate in detecting the perpetrator and proving his/her guilt, affecting its definite result. The sum of all actions undertaken by them yield specific effects⁹.

The objective of this paper is to present the results of the author's own studies of 90 court and inquisitorial cases, showing the relationship between correctly conducted forensic evidence by inspection and the process of detecting perpetrators of killings. These research issues will be presented along the sequential stages of criminal proceedings.

II. Methodology of studies of court files

The subject matter of the author's own research of Polish files of court and inquisitorial cases covered 90 criminal cases from the 2000-2010 period, where inspections were conducted in cases of killings (Article 148 of the Polish Penal Code - Statute of 6 June 1997 Code of Penal Law (Journal of Laws of 1997, No. 88, item 553 with later amendments)). These proceedings were conducted in 17 units of the common court system and prosecutor's offices within the areas of jurisdiction of the Appellate Court in Krakow, and the Appellate Prosecutor's Office in Krakow. The research tool used was a questionnaire containing 40 guidelines pertaining to the issues discussed in this paper, including both quantitative and qualitative features. In the 90 cases studied, a total of 251 procedures of conducting evidence by inspection were conducted, including 110 inspections of scene of events, 20 inspections of corpses, 29 bodily inspections of persons, and 92 inspections of things.

The analyzed cases were chosen using the multi-stage sampling method¹⁰, which in Poland is widely used in the social sciences. The first stage of the study was to determine its three layers (place, time, scope). Material from the first stage was applied to the second stage by means of simple stratified sampling which means that any file in a particular "layer" could be drawn and with equal probability.

⁸ K. Juszka, *The effectiveness of detecting perpetrators of offences. Theoretical issues* (in:) H. Kolečki (ed.), *Forensic and penal sciences in the face of crime. A commemorative book dedicated to Professor Mirosław Owoc*, Poznań 2008, p. 313 [in Polish].

⁹ K. Juszka, *Quality of forensic procedures...*, op. cit., p. 12 [in Polish].

¹⁰ R. Zasepa, *Multiple stage sampling*, Warsaw 1972, p. 17 i 23 [in Polish].

With this method it is possible to use statistical sampling to identify representative study material as it is collected in a variety of courts and prosecutors' offices. Thus, this method ensured significant cognitive and utilitarian effects.

III. Analyzing the results of studies of files of criminal cases

The research issues discussed in this paper were divided into two principal parts. The first pertained to the correctness of the carrying out of the inspections in the cases of killings. The second covered the effects of carrying out the action on the detection process of the perpetrators of killings.

The correctness of the inspection course was principally assessed by the following factors: composition of inspection team, phases of conducting evidence by inspection, and by the technical and procedural securing of the subject of inspection. The effects of the inspections on the detection process were presented particularly from the viewpoint of post-inspection notes and the issue of the unrepeatability of inspection.

Polish forensic tactics indicate that the correct composition of an inspection team should include a leader of the inspection team (a prosecutor or a policeman of investigative-inquiry unit), a policeman from the forensic unit of the Police, policeman from the operational-intelligence unit of the Police, and a physician from the forensic medicine department, or another physician. The composition of the team may also include a policeman familiar with the given area, forensic experts within the spheres of their competences, court experts from the official list of the court, other experts from outside the Police or court list, included in the inspecting team because of their specialist knowledge, and a guide with a sniffer dog.

The analysis during the author's own research of 90 criminal cases indicates that in 64 out of 110 inspections of scene of the event, the composition of the inspecting team was correct, while in the remaining 46 – it was incorrect. As regards conducting the evidence by the inspection of corpses, in 11 out of 20 inspections the composition was correct, while in 9 inspections – it was incorrect.

In connection with the above, a more responsible approach to treating the importance of an inspection by the members of inspection teams (prosecutors, forensic physicians or other physicians, forensic technicians, and policemen) should be postulated, expressed by both personal participation in the course of

inspections as well as by revealing and securing traces and sources of evidence on the scene of the event, as it is recommended by forensic tactics.

The second factor of the correctness of conducting the inspection, is the tactical division of the course of inspection into three phases. After the inspection team starts the inspection, the latter is divided into three stages, developed according to Polish forensic practices: the preliminary inspection stage, the detailed inspection stage, and the stage of final inspection.

The stage of preliminary inspection is characterized by the developing of the topographical concept of inspection, and by a number of other actions associated with the

reaction to the event, including developing forensic versions¹¹, recognizing the nature of the event, and preparing the operational-legal group to conduct a detailed inspection¹².

The phase of detailed forensic inspection is divided into static and dynamic phases¹³. The difference between the two stages consists in the range of actions¹⁴. During the static stage, the inspection team aims for a possibly more accurate preservation of the situation found at the place of the event, without disturbing its status quo¹⁵. The dynamic phase is connected with the natural effects of the active work which consists of a thorough, planned, and systematic inspection of each trace or place in which, according to a certain forensic version, the trace may occur¹⁶.

The last, final stage of inspection is – above all – the mental phase, involving the review and verification of the findings related to various forensic versions, with the possibility of an attempt to complement the dynamic phase in the case of finding gaps¹⁷.

The above stages of conducting an inspection should be clearly distinguished from one another in the protocol of inspection.

During the analysis of the results of the author's own studies of inspection protocols, it was found that in the 52 protocols of inspections of scene of the event the three stages were distinguished whereas in 58 such protocols this

¹¹ K. Juszka, *Forensic version...*, op. cit., p. 66 [in Polish]; S. Pikulski, *Fundamental issues...*, op. cit., p. 205 [in Polish]; K. Juszka, *Quality of forensic inspections...*, op. cit., p. 50-51 [in Polish]

¹² J. Mazepa (ed.), *Vademecum for forensic technicians*, Warsaw 2008, p. 23 [in Polish]

¹³ S. Pikulski, *Jealousy killing*, Warsaw 1990, p. 410 [in Polish]; K. Sławik, *Forensic science in relation to criminal trials, criminology and victimology*, Szczecin 2003, p. 90 [in Polish].

¹⁴ J. Kasprzak, B. Młodziejowski, W. Brzęk, J. Moszczyński, *Forensic science*, Warsaw 2006, p. 191 [in Polish].

¹⁵ Ibidem, p. 191-192 [in Polish]

¹⁶ W. Kędzierski, *Forensic techniques*, Szcztytno 2007, p. 104 [in Polish]; T. Hanausek, *Forensic science...*, op. cit., p. 87 [in Polish].

¹⁷ T. Hanausek, *Forensic science...*, op. cit., p. 87 [in Polish].

recommendation of Polish forensic tactics was not observed. In the protocols of inspections of corpses, the division into these stages was applied in 12 inspections whereas in 8 inspections they were not distinguished. The protocols describing bodily inspections of persons and the inspection of things manifested in a lack of division into the stages of inspection.

To sum up, it should be postulated that division into phases of inspection should be applied in each protocol as an essential element of monitoring the correctness of conducting that action.

In Polish criminal procedure, the technical and procedural methods of securing the object of inspection are applied. The technical methods for securing include traditional means such as: photography, film, schematic drawings, a short description on a special form, measurements, and from among modern methods one should pay attention to the rapidly developing application of 3D techniques¹⁸.

In the author's own research it was found that in 90 studied cases, the inspections were documented using photographs and films in 99 inspections, and in 11 out of these it was not done. In 16 out of 20 inspections of corpses, the subjects of inspection were photographed and filmed whereas in 4 inspections this form of technical documentation measure was not applied. In the course of inspections of persons, photographs and films were made of 2 persons whereas photographs or films were not taken of 27 inspected persons. In the inspections of things, 31 inspections were documented by photographs and films whereas in the remaining 61 inspections these forms of documentation were not used.

The documentation of scene by schematic drawings was done in 45 inspections of places and it did not occur in 65 inspections. The inspections of corpses were secured in the abovementioned manner in 2 inspections whereas the remaining 18 inspections were not documented by making schematic drawings. In 1 out of 92 inspections described in this paper whereas in 91 inspections such drawings were not made.

The short description on special forms as a technical method of securing the subject site of inspection were used in 95 inspections whereas in 15 inspections this method was not applied. In 6 inspections of corpses, the short description on special forms as a technical method of securing the subject site of inspection were prepared whereas in 14 inspections they were not made. As regards inspections of persons, in 2 inspections the short description on special forms as a technical method of securing the subject site of inspection were prepared whereas in 27 inspections this method of securing evidence was not used. In the

¹⁸ K. Juszka, *3D scanning...*, op. cit., p. 117-122 [in Polish].

case of inspections of things, in 62 inspections the short description on special forms as a technical method of securing the subject site of inspection were used whereas in 30 inspections the short description on special forms as a technical method of securing the subject site of inspection were not included.

In the studied cases, measurements were taken during 92 inspections of places whereas in 18 inspections no measurements were taken. In 15 inspections of corpses, measurements were taken whereas in 5 such inspections this form of securing evidence was not used. In the inspections of persons, measurements were taken in 16 inspections whereas in 13 inspections they were not taken. In 32 inspections of things, measurements were noted whereas 60 such inspections did not use this method. No use of 3D scanning was found in the studied case files.

In view of the above, it should be postulated that a detailed documentation of each piece of forensic evidence conducted by inspections should be made, using films and photographs as well as using newer technologies, particularly 3D scanning, since these may be of significant assistance in detecting perpetrators, and the evaluation of his/her criminal liability.

The principal for documenting procedures performed in Poland within the framework of criminal proceedings is a protocol¹⁹ whose drafting allows the later reconstruction of the course of the procedure as well as declarations of knowledge and will²⁰.

The objective of the protocol is to preserve the evidence which relieves the adjudicating agency from the obligation to perform a given procedure independently²¹. The protocol also enables the formal and substantive verification of the correctness and completeness of the inspection.

The Polish methodology of inspections of the scene of the event calls for the writing of the entire protocol on the scene of the event. On the other hand, the inspection of a person, because of the specificity of this action is prepared, during that action, most often at the Police station. The inspection of corpses can be described either in a separate protocol or can be a part of the protocol of inspection of a given site. The inspection of things, particularly on account of their diversity, can be recorded in a separate protocol or be described in the protocol of the inspection of the relevant site.

The author's own studies pertaining to the form of protocol concentrated on two aspects: applying professional nomenclature, and the Polish tactical forensic

¹⁹ S. Pikulski, *Fundamental issues...*, op. cit., p. 94-95 [in Polish].

²⁰ Ibidem; T. Hanausek, *Forensic science...*, op. cit., p. 223. [in Polish]

²¹ E. Gruza, M. Goc, J. Moszczyński, *Forensic science – a book on the methods of investigation*, Warsaw 2008, p. 223 [in Polish].

principle requiring that each sheet of the protocol is signed by each participant of the inspection.

In 110 scene inspections studied, the nomenclature applied in protocols was correct in 44 inspections and incorrect in 66 inspections. In 16 protocols of inspection of corpses, the correct nomenclature was used whereas in 4 protocols it was not used. In 14 protocols of bodily inspections of persons, no mistakes in respect to nomenclature were made whilst in 15 protocols mistakes occurred. The correct nomenclature was used in the description of 57 inspection of things, whereas during 35 inspections this requirement was not observed.

The requirement that each sheet of the protocol should be signed by all participants of the inspection process was observed in 83 scene inspections, whereas 27 protocols lacked some required signatures. The aforementioned recommendation of forensic tactics was met in 13 protocols of inspection of corpses, whereas in 7 such inspections it was not observed done. Among the protocols of bodily examinations of persons, 23 of them were signed on each sheet of the protocol, whereas in 6 protocols of such inspections there were omissions in this respect. In 79 protocols of inspections of things all sheets were properly signed, whilst 13 protocols lacked some signatures.

With regard to the obligation of using the correct nomenclature it should be postulated that the protocols should contain more frequent and more detailed descriptions of corpses and individual parts of the body as well as early symptoms of death, a more frequent observance of precision in the description as well as in the technical and procedural documentation of visible injuries on corpses, and in the description of spots subject to inspections. As far as the requirement of affixing all signatures to each sheet of the protocol, more thorough attention should be paid to checking the final form of the protocol by the leader of the procedure of inspection.

The analysis of the effect of conducting the forensic evidence by inspection upon the detection process should begin from characterizing the post-inspection note²² i.e. non-procedural document which a forensic technician can prepare after the inspection of scene of the event, and after performing the remaining procedures²³. Such a note documents what arises or may arise from the results of inspection, and marks the hierarchy of subsequent intentions and actions²⁴.

²² Ibidem, p. 217 [in Polish]

²³ J. Mazepa (ed.), *Vademecum...*, op. cit., p. 75 [in Polish].

²⁴ P. L. Kirk, *Crime Investigation. Physical Evidence and the Police Laboratory*, New York -London 1953, p. 2.

The author's own research indicates that the inspection note was prepared in 18 inspections of places, whereas in 92 inspections it was not prepared. Because of the specific nature of this note, it was not prepared in connection with the inspected corpses, persons, and things.

In the light of the above, it should be postulated that an official post-inspection note is prepared each time, drawing the tactics of utilization of the pieces of evidence, the sequence of conducting specialist forensic studies in connection with the conducted inspection of scene of the event. It should be done because of its essential importance to the process of detecting the perpetrator, and to the further course of proceedings.

The tactical principle of conducting forensic evidence by inspection which affects the further course of criminal proceedings is the principle of unrepeatability of inspection. The observance of the unrepeatability of inspection is supported by the proper security of inspection, sticking to the timetable of work, and avoiding contamination²⁵.

Polish literature in the field of criminal law correctly presents a predominant opinion that the inspection of place is an unrepeatable action²⁶. It is also emphasized that the inspection of a person as well as the inspection or exhumation of a corpse are unrepeatable actions²⁷. The specificity of the inspection of things also indicates its unrepeatability²⁸.

The analysis of the author's own studies indicates that repeated inspections were performed after 15 proper inspections, whereas 95 proper inspections were not repeated. The repeated inspections of corpses were performed in 2 cases of the inspections proper, while after 18 proper inspections of corpses no repeated inspections were carried out. None of the inspections of persons and things were repeated.

Therefore, an insightful and comprehensive treatment of the final phase of inspection of the scene of the event should be postulated in order to exclude a repetitive inspection which goes contrary to Polish forensic tactics.

²⁵ K. Juszka, *Quality of forensic procedures...*, op. cit., p. 55 [in Polish].

²⁶ K. Juszka, *Prospects for improvements in the system for detecting perpetrators of offenses*, "Prokuratura i Prawo" (2009), no. 7-8, p. 220 [in Polish]; E. Żywucka-Kozłowska, K. Juszka, *Some remarks about the importance of corpse inspection at the place of its discovery*, "Problemy Współczesnej Kryminalistyki" (2003), part I, p. 249 [in Polish].

²⁷ J. Gurgul, *Personal aspects of inspection, particularly of scene of crime and corpses* (in:) M. Lisiecki, M. Zajder (ed.), *Procedural-forensic actions in conducting evidence*, Szcztyńno 2003, p. 61 [in Polish].

²⁸ T. Hanausek, *Forensic science...*, op. cit., p. 130 [in Polish].

IV. Summary of the results of studies of criminal court files

The results of the studies on the effectiveness of the detection process in cases of killings in Poland were presented in three mutually complementary ways. The first method concerned the correctness of conducting inspections divided into the types of inspections: inspection of scene of the event, corpse, person or thing. Secondly, an analysis of the effect of conducting this procedure upon the detection process of perpetrators of killings was presented. Thirdly, proposals of actions changing the practice of conducting this procedure in the current state of law were put forward, pertaining both to procedural and tactical issues.

A broad theoretical and research analysis of the inspection as the principal and most important procedure in the course of criminal proceedings as well as a prime and the multifaceted nature of its impact on such proceedings will contribute to the further development of research on the procedure discussed in this paper.

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Summary

The objective of this paper is to present the results of the author's own studies of 90 court and inquisitorial cases, showing the relationship between correctly conducted forensic evidence by inspection and the process of detecting perpetrators of killings. These research issues will be presented along the sequential stages of criminal proceedings.

KEY WORDS: inspection, effectiveness, detection process, research results, scene of an event.

Streszczenie

Celem artykułu jest prezentacja wyników badań własnych 90 spraw sądowych i prokuratorskich przedstawiających relację między prawidłowo przeprowadzonymi oględzinami a procesem wykrywczym sprawców zabójstw. Niniejsza problematyka zostanie przedstawiona poprzez kolejne etapy postępowania karnego.

SŁOWA KLUCZOWE: oględziny, efektywność, proces wykrywczy, wyniki badań, miejsce zdarzenia

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