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THE IMPORTANCE OF DATA COMPILATION IN CRIMINALISTICS

Introduction

It is important to define the right method of data compilation during the procedure of crime detection so that they can be used as evidence in the evidentiary procedure. Due to the conspiracy of organized criminal circles the

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investigation may be halted at the phase of crime detection and the gained data cannot be used as evidence. During the evidentiary procedure only those data can be used whose source, the way of their gathering, their record and processing are in accordance with the rules of legal procedure and fulfill the requirement of authenticity or if the compiled data contain truth.

It is not enough to be aware of the truth, verdicts cannot be delivered subjectively in the courts, since not the belief but the legally required conviction is the ruling factor.¹

During the investigation there are two distinct levels of revealing the truth, crime detection and evidentiary procedure.

During crime detection the investigative authority carries out data compilation and processing, which contributes to the establishment of the historical conclusion of facts and provides the investigative procedure with the necessary data as well. Crime detection serves evidentiary procedure, the other level of revealing the truth, during the course of which data must be obtained according to the rules of legal procedure in a way that their authenticity worthiness and authenticity can be verified, furthermore the usage of data gained by crime detection must be ensured within the legal regulations. «On the basis of factual suspicion the criminal procedure is formally initiated as a result of previous covert information-gathering, and from this moment on any activity aiming at the gathering of data and information is classified as a data compilation serving evidentiary procedure (other covert activity). It means that any covert information-gathering aiming at finding and revealing any information in connection with law enforcement or criminal offence and information gathering during the formal investigative procedure (criminal

¹ Erzsébet Balláné Füsster –János Lakatos (2012): A nyomozás, a felderítés és a bizonyítás, In: Lakatos János, Kriminálisztika I. A kriminálisztika egyes elméleti kérdései, Nemzeti Közszołgálati Egyetem, Budapest., 121. o.

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procedure) must be considered as an integral whole, which can be interpreted as different phases of the truth revealing activity of the investigative (and crime detection) authorities.»²

The rules of evidentiary procedure are written in the Law of Criminal Procedure, according to which evidence can be obtained only in a way prescribed in the law and evidence obtained only in this way can be used. Crime detection is a much broader category than evidentiary procedure, as it makes revealing the pure (objective) truth possible and it provides the enforcement with the necessary data.

«In order to establish the suspicion and its direction evidence of satisfactory quality and quantity is required, i.e. the means of evidence and the results of evidentiary procedure during the investigation. These can substantiate indictment and – exceeding the highest level of suspicion and reaching certainty - result in a condemning verdict, which guarantees the enforcement of the punitive power of the state.»³

The theoretical aspects of the evidentiary procedure can be in the focal point of criminalistics:

- when there are doubts considering the revealing of past events
- when it is uncertain whether we are able to check the accurateness of our knowledge
- whether revealing the truth can be considered as evidentiary procedure or it can only be carried out in the court⁴

² Péter Nyester: A titkos információszerezés szükséges és lehetséges reformja, Belügyi Szemle 2015/1. szám. 69.o.

³ Livia Horgos (2018): **A büntetőeljárás gyanú fogalmának új felfogása egy jogeset tükrében- kézirat, Magyar Jog (megjelenés alatt)**

⁴ Géza Finszter (2015): Bizonyítás elméletek a jogvilágában. In: Tóth Éva – Belovics Ervin,): A büntetőeljárás segédtudományai I., 25. o.

The notion of evidentiary procedure can be regarded from a criminalistic point of view as a reconstruction of a past criminal offence or suspicious activity so that criminal justice can decide on the punitive claim of the state.⁵

During the procedure of crime detection any data, information, opinion, source of data that makes revealing the objective truth possible can be used. The information content of a not valid data can be also used within the frame of a possible version during the checking of which a procedural activity can be initiated, thus the data gained by this way can be used as evidence. During the data compilation procedure information can be obtained even in a covert way from the source of the information, thus the course of the event can be revealed but it rules out the possibility of using the information as direct evidence because it was not obtained according to the rules of the Law of Criminal Procedure. It must always be weighed whether we need data only for the use of crime detection, i.e. we would like to support or preclude information (checking), or we would like to use the obtained data as evidence. In order to obtain the necessary information different registers and any source of data can be used not only the means of evidentiary procedure stated in the Law of Criminal Procedure. During crime detection activity registers may contain data relevant or irrelevant regarding the investigation, authentic or unchecked, or usable or unusable ones in evidentiary procedure.⁶

But if the evidence and the data derived from it are of different conclusion of fact they can not be used in the evidentiary procedure and revealing the truth and reconstructing a past criminal offence was in vain.

In certain cases data obtained by crime detection can mislead investigative authorities, and it is not sufficient if the authority knows how a certain criminal

⁵ Finszter i.m.: 25–26. o.

⁶ János Lakatos (1998): A nyomozás, felderítés és a bizonyítás kriminalisztikai alapfogalmai és alapösszefüggései. Rejtjel Kiadó, Budapest, 12–13. o.

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offence happened, who the perpetrators are, but the authenticity of relevant data must also be proved.

The evidentiary procedure is one which supports the authenticity of the data obtained by crime detection, which verifies the relevant facts and ensures the irrefutability of those data.⁷

The activities and statement of the court, the public prosecutor, the investigative authority and every party of the procedure are aimed at revealing the mostly past events or criminal offence and the person of the perpetrator. During the evidentiary procedure the member of the investigative authority, the public prosecutor, the judge and the defender get to know a past event indirectly by reconstruction since they could not perceive it by their senses. If they could sense, see or hear the criminal offence they would take part in the procedure as witnesses and would not be given any other role in it. During reconstruction it must be revealed whether a criminal offence happened or not, if so who is responsible for it and to what extent he/she is criminally liable.

1. Classical way of data compilation during investigative procedure

The different methods of data compilation play an important role in crime detection and evidentiary procedure, but data must be gathered without being distorted and be separated from opinions. Opinions also have their importance, they can support a version, which must be checked later. The classical methods of gathering data are: personal interview, inquiry, environmental scanning, police surveillance, involving citizens in data gathering, criminalistic trap.

The proper way of data compilation must be chosen according to our aim since it must be taken into consideration if the result will be used as data,

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information or evidence. It is always the actual aim that decides on the method.⁸ (e.g. the questioning of the people living in the neighbourhood can be conducted in the form of an inquiry, whose aim is to check a version, but if the gained information will be used as evidence the interview takes place during an interrogation.)

During the course of an investigation revealing the truth about a past event is realised by collecting data, which can be turned into evidence depending on their content and source. Data may refer to a person, an object, an examined event and can derive from different sources: a person, an exhibit or register.⁹ Investigation procedure – from ordering a criminal procedure to the disclosure of investigation files - can be regarded as data compilation.¹⁰ The sources of data can be divided into three main groups: material, personal (e.g. the actors of an event) and combined (using both material and personal sources). During the investigation changes happened on the occasion of the event, registers and databases can be used as material sources.¹¹

The perpetrators mostly in order to avoid being prosecuted disguise their criminal offences, thus they remain latent for the authorities. Furthermore they try not to reveal their personalities. To reveal the secret, hidden or concealed data are important to the law enforcement authorities, thus they carry out different data compilation and use traditional covert forces and means to reach their goal.¹²

⁸ Endre Barta (2001): Az adatgyűjtés, In.: Lakatos János, Krimináltaktika I., Rejtjel Kiadó, 64. o.

⁹ János Lakatos (1998): A nyomozás, felderítés és a bizonyítás kriminalisztikai alapfogalmai és alapösszefüggései. Rejtjel Kiadó, Budapest, 55. o.

¹⁰ Fanni Pilisi (2012): Bűnügyi adatgyűjtés, különös tekintettel a raszternyomozásra. Büntetőjogi Szemle 2012/2., Budapest, 118. o.

¹¹ János Lakatos (2005): Kriminalisztikai alapismertek. Rendőrtisztai Főiskola, Budapest, 36. o.

¹² Géza Finszter (2004): A bizonyítási lehetőségek felkutatásának különleges módjai és eszközei, In.: Bócz Endre, Kriminalisztika 2., BM Kiadó, Budapest, 703–704. o.

During inquiry information can be obtained even in a covert way from the information source, which may contribute to revealing the course of the event, but at the same time it rules out the possibility of using the information as evidence since it was not obtained in accordance with the rules of the Law of Criminal Procedure. It always must be weighed whether the data is needed only for the sake of crime detection to support or rule out (check) information or the obtained data are intended to be used as evidence.

We have authentic data to no avail showing that the car was stolen because it was intended to be sold if the way these data were obtained are not in accordance with the rules of the Law of Criminal Procedure and based on the statement of the suspect only arbitrary confiscation of a vehicle can be established. It may happen that the person involved in the procedure privately informs us about the course of events, why he stole the vehicle but he does not make a testimony because he is afraid or there is hindrance to the testimony. The authority is aware of the past event and how it happened, revealed the theft but regarding the means of evidence and the testimonies a different conclusion of fact is established.

It is not enough if the member of the investigative authority makes sure how a relevant past event happened but he also has to prove his conclusions. In the evidentiary procedure personal evidence can be used when the person involved in the procedure makes a testimony and its content can be used as evidence.

During data compilation environmental scanning is also a means of evidence, which contains – in case of a juvenile suspect – data recorded and processed by the institute of public education, or information given by the workplace and risk assessment of the juvenile regarding crime prevention. Environmental scanning can also be used as means to survey an object.

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Environmental scanning can be used in the arrest warrant procedure or in covert information gathering.

The police involves the public in data compilation if necessary, in which process media, other means of communication and the free green numbers are of considerable help.

When the public is involved in data compilation it conveys the obtained information to the police, but during data compilation no information contrary to the interest of the investigation can reach the public, i.e. can not be revealed.

The police can get informed about the organised criminal circles with the help of the telephone witness programme since citizens have the possibility to inform the authorities about criminal offences. Victims are frequently afraid of informing the authorities personally because they fear intimidation, violence or later threats but in this way they can give information without revealing their identities (in some cases embellished, false information). There is no possibility to gain further information from these anonym people thus the information obtained this way frequently misleads the investigative authority and results in extra work.

Police surveillance as a data compilation method is generally used: both in the evidentiary procedure and the inspection when the inspection of a person, an object or a scene or the surveillance of an object or a scene is necessary to investigate or define an allegation. The minutes taken at the home search must contain the course of the investigative procedure, the behaviour of the person involved in the home search or that of his/her agent's (representative's), from a tactical point of view the behaviour of the confronted persons, furthermore the behaviour of the persons involved in the evidentiary procedure, and the behaviour of the victim, the witness, the suspect and the defender during the interrogation also from a tactical point of view (f.ex. if the defender violates the order of the procedure, obstructs the procedure or breaches his/her procedural

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commitments can be imposed a fine for contempt). During police surveillance the connections of the targeted person can be mapped, he can be arrested, his movements and daily activities can be followed (e.g. to define the exact time of the home search at a member of the organized crime gang his daily activities, the time span when he stays at his address or the examination and record of morning and evening cell positions of his telephone's call list are important).

Crimonological traps also belong to the means of data compilation and they are generally used in the case of clearing up repeated crime.

The criminalistic trap can be personal, technical, combined or operative. When setting up the trap conspiracy is of utmost importance, similarly to keeping its operation in secret. Within the frame of information gathering not bound by the permission of a judge the police in accordance with the Article No.: 63 ,Paragraph (1) , Point e) of the Police Law is entitled to apply a trap in the course of its law enforcement activities in order to reveal the perpetrator of a criminal offence or for the sake of evidence.

The investigative authority may apply different means of data compilation simultaneously as they complete each other. For example when setting up and checking a vehicle trap a number of factors must be taken into consideration:

- where and when the trap vehicle must be deployed
- whether the offence is part of a repeated activity
- what type of car is suitable for the purpose
- the method of the criminal offence
- personal, objective and technical requirements

During the course of case examination the above mentioned questions can be answered.

Planning and organization influences crime detection and the evidentiary procedure to a great extent. Just to elaborate the above mentioned example the investigative authority may know of a separate group specialized in vehicle theft

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and another one specialized in dismantling and selling the vehicle. If the perpetrator stealing the trap vehicle is arrested on the spot (parking lot) the investigative authority can not get to the workshop if the suspect denies to make a testimony. The authority can not get more information in this case and the investigation comes to a standstill on the level of crime detection. If the perpetrator is not arrested on the spot but is allowed to drive the car to the workshop and he is proceeded there then the members of the other group can also be accused and the investigative activities can be more effective and may lead to obtaining evidence.

Crime detection is necessary for the authority to be able to take the relevant steps because for lack of it the principle of the completeness of the investigation can not be met. Planning and organizing an investigation is influenced by the findings of the crime detection activity. Prior to setting up a trap it must be weighed if the authority relying on the data at its disposal is able to get to the second group, if it possesses the necessary personal, objective and technical means to be able to check and follow the trap vehicle in a covert way. Tactics may include that the data obtained during the interrogation of arrested perpetrator arrested on the spot (during crime detection period) will be used according to an interrogation tactics, and the investigative authority based on the confession of the suspect will get to the members of the other group and the workshop with more stolen vehicles (or their parts suitable for identification). The interrogation tactics are not always successful and as a consequence the principle of the completeness of the investigation is only partially met. Some perpetrators can not be prosecuted and on the bases of the statements the classification of the criminal offence will be different., independently from the findings of the crime detection activity.

According to the Article No.: 71 of the Law of Criminal Procedure of 1998 No.:XIX (later L. of C.P.) the investigative authority is entitled to request state

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and local self government agencies, authorities, public corporations, economic organizations, foundations, public foundations, and associations to give, inform, grant information and make documents available. The requested is compelled to fulfill the request until a given deadline – if the law does not prescribes otherwise - or inform the authority about the cause of the hindrance. The requested organization is compelled to provide the data disclosure free – which involves data processing, recording data in written or in electronic form and its disclosure. Investigation is a kind of truth revealing activity, which is supported by different registers, data stores from which information can be gathered.¹³ According to the Section (1) of Article 178. of L. of C.P. the investigative authority after starting an investigation is entitled to carry out data compilation in order to find out if there are evidentiary means and if so where and on the course of this activity it is entitled to make use of the law enforcement databases of law enforcement authorities as stated in the law. According to the regulations regarding request it is entitled to ask documents and data to be disclosed from anybody.

2. Raster Investigation

The investigative authority carries out general filtering and research activities in registers and databases. The investigative authority usually uses the criminal register during criminal procedures but it is essential that investigative authorities and secret services create registers that record the traces of perpetrators in the cyber space since online activities are connected to more and more criminal offences.¹⁴ The members of the investigative authorities can reach the database via their own computers, which makes the flow of information faster. Although there are several registers that can be reached only indirectly.

¹³Endre Nyitrai: A felderítés és a bizonyítás kriminalisztikai megközelítésből, In: Doktoranduszok Országos Szövetsége, Tavasz szél konferenciakötet, 2015., Budapest, 614. o.

¹⁴ Béla Simon: A bűnüldözés előtt álló digitális kihívások - kézirat, In: Magyar Rendészet, 2018 megjelenés alatt

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Raster investigation is the investigation of the future, since it saves time, information could be obtained easily, via a computer at a desk, the flow of information would be faster and the obtained data would promote criminalistic thinking. 'Raster investigation' is a methodological method, on the course of which research takes place in databases and electronically recorded and stored data would contribute in successful investigation, but most data would help crime detection and not evidentiary procedure.¹⁵

Closing Remarks

It seems that besides traditional forms of data compilation (inquiry, request, police surveillance, environmental scanning, mass communication means, criminalistic trap) the gathering of digitally stored data can contribute to a successful data compilation. Based on the obtained information and data partial or whole plans can be made, versions can be set up and investigative aims can be defined. Mapping digitally stored data and revealing their content is indispensable similarly to the examination of the obtained data. Digital, electronic data must be considered more seriously in order to create an information chain and reveal a past event. It makes possible to use data obtained during crime detection activity as evidence if they meet the requirements of authenticity and credibility. The importance of raster investigation is digitalization and as technology advances it will have a more decisive role in future investigations.

¹⁵ Endre Nyitrai: Raster Investigation, **Casopis NaUOA. Seria "Pravo"**, 2015/11.; pp. 1-24.

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The importance of data compilation in criminalistics

This study illustrates the connection between crime detection and presentation of evidence from a criminalistic point of view, it underlines the role of data compilation as an indispensable element of investigation. Data compilation is present all along the investigation procedure. We deal with the classical forms of data compilation and emphasize the so called «raster investigation» as the way of investigation of the future.

Key words: crime detection, investigation, inquiry, request, raster investigation.

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