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Kazimiera Juszka, Karol Juszka

Studies vetting the observance of rules for conducting forensic evidence by inspection in killing cases in Poland

Badawcza weryfikacja przestrzegania zasad prowadzenia oględzin w sprawach o zabójstwa w Polsce

I. Introduction

The rules for conducting forensic evidence by inspection (Articles 207-210 of the Polish Code of criminal procedure¹) is the most important judicial-forensic procedure at the scene of an event. It creates a system and forms a model for the proceedings conducted by the judicial authority, pertaining in particular to the actions of persons conducting the forensic evidence by inspection and to the results of this action².

The objectives of implementing the rules for conducting forensic evidence by inspection is to ensure the efficient and effective performance of the aforementioned action³, using all the sense organs and technical means⁴, enabling improvements in the organisation of work and legal protection of the detected pieces of evidence⁵ (Kędziński, 2007, p. 97).

The objective of this study is to present the results of the author's own research of 90 court and inquisitorial cases in which inspections were conducted in killing

¹ Statute of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555 with later amendments).

² W. Kędziński, *Forensic techniques*, vol. 1, Szczytno 2007, p. 104.

³ T. Hanausek, *Forensic science*, Warsaw 2009, p. 44 [in Polish]; E. Gruza, M. Goc, J. Moszczyński, *Forensic science – a book on the methods of investigation*, Warsaw 2008, p. 221.

⁴ J. Mazepa, (ed.), *Vademecum for forensic technicians*. Warszawa. 2008, p. 20.

⁵ W. Kędziński, *Forensic techniques...*, *op. cit.*, p. 97.

cases. The presentation of the research issues will be analysed from the viewpoint of implementing the rules for conducting these procedures.

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 Code⁶). 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 method⁷, 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.

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. Analysis of the results of research involving court and investigative case files

The law of criminal proceedings, and forensic theory and practice are the sources of the rules for conducting forensic evidence by inspection in Poland⁸. The results of the author's own studies of 90 cases implementing the objective of this

⁶ Statute of 6 June 1997 Code of Penal Law (Journal of Laws of 1997, No. 88, item 553 with later amendments).

⁷ R. Zasepa, *Multiple stage sampling*, Warsaw 1972, p 17 i 23. [in Polish]

⁸ W. Kędzierski, *Forensic techniques...*, *op. cit.*, p. 97.

paper will be presented below in the course of the analysis of particular rules for conducting forensic inspections developed in the fields of forensic tactics and techniques⁹.

The first principle for conducting forensic evidence by inspection is the principle of objectivity which calls for the carrying out of all forensic research and activities in an impartial manner without any *a priori* attitude or prejudice to the event and parties. This is a principle calling for a matter-of-fact attitude free of any prejudices. This principle requires the obligatory use of forensic tactics in order to develop such methods of work which would exclude any impartiality of the person carrying out the proceedings¹⁰.

One of the examples of the methods of work required to ensure objectivity is tactically securing the site of the forensic evidence by inspection, which is also called the isolation the site.

The main task for the person arriving at the scene of the event is to tactically and technically secure it against the loss of forensic traces¹¹. Technical security involves e.g. taking into account current atmospheric conditions at the scene of the event, and preventing access by outsiders to the site of the event, by using ropes, tapes, or screens¹². The tactical activities of securing the site of the event discussed in this study are aimed at, in particular, preventing the possibility of any unauthorised access to information about the proceedings in question¹³.

The author's own research consists of 110 examples of gathering forensic evidence by inspections at sites of killings investigated in 2000-2010. This involves 19 protocols which included information that the site of inspection was isolated. In 31 inspections the site was not isolated, whereas in 60 protocols of inspections the information about this was not included in the protocols. In all 20 protocols of the inspection of corpses, 29 protocols of bodily inspection of persons, and all 92 protocols of the inspection of things, no information about isolation of the place of inspection was included. In connection with this, a more responsible attitude to the isolation of the place of inspection should be postulated along

⁹ J. Mazepa, (ed.), *Vademecum...*, *op. cit.*, p. 21 .

¹⁰ T. Hanausek, *Forensic science...*, *op. cit.*, p. 206-207 [in Polish]; W. Kędzierski, *Forensic techniques...*, *op. cit.*, p. 98-99 .

¹¹ J. Mazepa, (ed.), *Vademecum...*, *op. cit.*, p. 21 .

¹² E. Żywucka-Kozłowska, K. Juszka, *Inspection of the site of a plane crash. Selected issues of identification of victims*, Zielona Góra. http://www.zielona-gora.po.gov.pl/esi-admin/upload/lektury_elektroniczne/ogledziny-miejsca-katastrofy-lotniczej.pdf (electronic publication of Prokuratura Okręgowa w Zielonej Górze, 2012), p. 2 [in Polish]; B. Innes, *Bodies of evidence. Methods for detecting crimes*, Warszawa 2001, p.10 .

¹³ K. Juszka, *Quality of forensic procedures*, Lublin 2007, p.34 .

with the obligation to record this action in the protocol of conducting evidence by inspection.

The second principle of conducting forensic evidence by inspection is the principle of activity which is a directive of energetic and dynamic behaviour, organisational efficiency, and the concentration of attention by the person leading the inspection¹⁴. Organisational efficiency is particularly manifested in observing the principle of tactical division of the inspection into three phases: a phase of preliminary inspection, a phase of detailed inspection, and a phase of final inspection. All three phases are equally important in the course of conducting forensic evidence by inspection, even though different actions are undertaken during each of them¹⁵.

The phase of preliminary inspection begins after the decision on the need to conduct the evidence by inspection of the scene of event¹⁶ and it is characterised by many preliminary activities connected with the reaction to the event, particularly with the recognition of the nature of the event, and the preparation for conducting a detailed inspection, e.g. by assigning tasks to the persons participating in the inspection, and when it is necessary to call experts to the scene of the event¹⁷.

The phase of detailed forensic inspection is divided into static and dynamic phases¹⁸. The objective of the static phase is to attempt the most accurate preservation of the situation found at the scene of the event with the mobility of members of the examining team kept to a minimum¹⁹.

The dynamic phase is connected with the natural effects of the active work which consists in the thorough, planned, and systematic research of each trace or location by using forensic versions²⁰.

The final phase of inspection is – above all – the mental phase, involving the review and verification of the arrangements by using forensic versions, with the possibility of an attempt to complement the dynamic phase²¹.

¹⁴ W. Kędzierski, *Forensic techniques...*, *op. cit.*, p. 97 .

¹⁵ S. Pikulski, *Jealousy killing*, Warszawa 1990, p. 409-410 [in Polish], J. Mazepa, (ed.), *Vademecum...*, *op. cit.*, p. 22 .

¹⁶ S. Pikulski, *Jealousy killing...*, *op. cit.*, p. 409 [in Polish]; E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, *op. cit.*, p. 212-213. [in Polish]

¹⁷ J. Mazepa, (ed.), *Vademecum...*, *op. cit.*, p. 23 .

¹⁸ S. Pikulski, *Jealousy killing...*, *op. cit.*, p. 409 [in Polish]; K. Sławik, *Forensic science in relation to criminal trials, criminology and victimology*, Szczecin 2003, p. 90 [in Polish]

¹⁹ K. Sławik, *Forensic science in relation to criminal trials, criminology and victimology*, Szczecin 2003, p. 192 [in Polish]

²⁰ W. Kędzierski, *Forensic techniques...*, *op. cit.*, p. 97 [in Polish], T. Hanausek, *Forensic science*, Warsaw 2009, p. 87 .

²¹ T. Hanausek, *Forensic science...*, *op. cit.*, p. 87 .

The above phases of conducting the forensic inspection should be clearly distinguished in the protocol of inspection.

In the course of analysing the results of the author's own research involving 110 inspections, it was found that the separation into phases of forensic inspection in the studied protocols was performed in 52 inspection of places, whereas in 58 inspections this recommendation of forensic tactics was not followed. In the protocols of the forensic inspection of corpses, the divisions into the aforementioned phases were applied in 12 inspections whereas it was not done so in 8 inspections. The protocols describing the bodily inspection of persons and inspections of things did not show the separation into the phases of forensic inspection.

To sum up, it should be postulated that the leader of the examining team should always pay attention to ensure that the division of forensic inspection into three phases is described in each protocol, as it counts as an important check on the correct performance of this action.

The principle of individual nature of conducting forensic evidence by inspections is an essential principle connected with the principle of non-repeatability of this action. In the light of this principle it is necessary to approach each inspection taking into account its object and the actions performed. It should be noted that even though different events have the same group features (e.g. type of event, kind of room, number of perpetrators, *modus operandi*), each of them is an individual situation. Practice shows that there is no possibility of ideal repetitions of the same inspections²².

The Polish forensic literature states the non-repeatability of a bodily inspection of a person, and abduction and exhumation of a corpse²³. One should agree with the prevailing opinion on the non-repeatability of site inspections²⁴ and the repeatability of the inspection of a thing²⁵. The most important factors in observing this principle include proper security when conducting the forensic evidence by inspection, keeping to the schedule of work, and avoiding contamination²⁶.

²² W. Kędziński, *Forensic techniques...*, *op. cit.*, p. 98 [in Polish]

²³ J. Gurgul, *Personal aspects of inspection, particularly of scene of crime and corpses* (in:) M. Lisiecki, M. Zajder (eds), *Procedural-forensic actions in conducting evidence*, Szczytno 2003, p. 61.

²⁴ 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, vol. VII, part I, p. 249.

²⁵ T. Hanausek, *Forensic science...*, *op. cit.*, p. 130.

²⁶ K. Juszka, *Quality of forensic procedures...*, *op. cit.*, p. 55.

Polish forensic tactics accepts two types of complementary inspection. The first type is connected with the necessity to consciously discontinue the inspection under way for reasons independent of the inspection team performing this procedure. The examples of such circumstances include time of day (e.g. night) of atmospheric conditions (e.g. fog, precipitation). The tactical consequences of such a discontinuation of an inspection is securing the place in a proper manner to allow renewed action of conducting forensic evidence by inspections in better conditions.

The decision to undertake the second type of complementary inspection is taken at the last phase of inspection, immediately after the completion of all actions included in the range of inspection, prior to the decision to leave the place. The decision is taken, for example, as a result of the omission of traces. As a consequence, it is admissible to go through all phases of conducting evidence by inspection, with an obligatory note of the performance of such inspection and description of its course in the protocol of inspection.

To perform repeated inspections contradicts the Polish forensic tactics. Unlike a complementary inspection, a repeat inspection occurs when the inspection team is not aware that its inspection has been discontinued, treating it as complete. After a certain time, as a result of a repeat analysis of the protocol of inspection, the decision of discontinuation occurs to be incorrect. As a consequence, the inspection team has to return to the place of the inspection in question, and comprehensively reveal and secure forensic traces. The results of such an inspection should take into account the change in atmospheric conditions and the possibility of prior or current contamination.

In the author's own studies of 90 cases, it was noted that the complementary inspection was conducted in 17 out of 110 inspections of sites, in 2 out of 20 inspections of corpses, in 20 out of 92 inspections of things, whereas in all 29 bodily inspections of persons, this kind of repeat procedure was not performed.

The analysis of the results of the author's own research indicates that a repeat inspection was performed after conducting 15 proper inspections, and 95 proper inspections were not repeated. The repeat inspection of corpses was performed in 2 cases of proper inspections of corpses, whereas after 18 proper inspections of corpses no repeat procedure was applied. In inspections of persons and things no repeat procedures were performed.

Considering the above, it should be postulated that in each case a detailed analysis of the performance of inspection should be made during the final phase of conducting it.

The last group of principles discussed in this paper is associated with the principle that pertains to the obligation to record everything in writing, requiring

that the record of all actions in the course of conducting evidence by inspection be documented in the form of protocol. The principles of drafting a protocol were formulated on the basis of provisions of the Penal code, and of forensic practice²⁷. The difficulty in preparing a protocol are associated e.g. with the necessity to describe in detail each trace, because in the course of inspection one may not be sure which detail will be of importance in a given case²⁸.

The first principle in this group requires that each part of the action be systematically and legibly recorded at the time of its performance. Therefore, it goes against the forensic tactics to write the protocol of inspection after the procedure is completed, most often later at the police station²⁹.

In writing the protocol, attention should be paid to the objectivity of the description which is achieved by editing it in the present tense and using the impersonal form³⁰.

The next principle regarding writing is a connected postulate that the inspection team leader should monitor the comprehensive record of the state of a place as found, in order to allow the subsequent reconstruction of the course of inspection. As a consequence, the objective of this principle is to avoid suggestions from conclusions arrived at by participants in the inspection, or by third parties³¹.

An important principle for writing the inspection protocol is the necessity to present synthetic descriptions using unambiguous concepts and nomenclature. In this respect, specialist literature containing collection of names of things and traces occurring at scenes of events, can be very helpful³².

Another essential principle for writing a protocol is to preserve in it the tactical sequence of actions undertaken by the participants of an inspection, irrespective of their final result³³.

²⁷ T. Hanausek, *Forensic science...*, op. cit., p. 222-224 [in Polish]; S. Pikulski, *Fundamental issues of forensic tactics*, Białystok 1997, p. 94-95 [in Polish]; E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, op. cit., p. 229.

²⁸ K. Juszka, *The principles for documenting an inspection*, „Przegląd Policyjny” 2009, nr 4, p. 48 [in Polish].

²⁹ E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, op. cit., p. 229 [in Polish]; J. Mazepa, (ed.), *Vademecum...*, op. cit., p. 46.

³⁰ E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, op. cit., p. 229 [in Polish]

³¹ Ibidem, p. 229, K. Juszka, *The principles...*, op. cit., p. 48 [in Polish]

³² E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, op. cit., p. 229 [in Polish]; M. Goc, J. Kasprzak, *The nomenclature of subjects of inspections*, Legionowo 1997, [in Polish]; Z. Kegel, *The concept of a document in legislation, science and practice of criminal law*, „Problemy Kryminalistyki” 1967, nr 65, p. 40-41 [in Polish]; T. Hanausek, *Forensic science...*, op. cit., p. 223 [in Polish]

³³ E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, op. cit., p. 229-230 [in Polish]; T. Hanausek, *Forensic science...*, op. cit., p. 223.

Yet another principle is the legal possibility of using audio and video recording devices in the course of conducting evidence by inspection. The professional literature highlights the requirement of synchronising information recorded by using these devices with the contents of the protocol. Observing the requirement of synchronisation allows the courts to admit these records in the further course of proceedings³⁴.

The last principle is the necessity of reading out the protocol of inspection after the action is over, and signing it both by the leader of the inspection team, as well as by all its participants on each sheet of the protocol³⁵.

The author's own research on the observance of the principle of keeping written form in practice, pertained to two principles in this group: applying the correct nomenclature and the obligation to sign each sheet of the protocol by each participant of the inspection.

The author's own research of 90 inspections of the scene of killing indicated that the correct nomenclature was applied in 44 inspections, whereas in 66 inspections the correct nomenclature was not used. In 14 protocols of bodily inspections of persons, this action was described with the use of the correct nomenclature, whereas in 15 protocols of these inspections no attention was paid to it. Among the protocols of inspections of corpses covered in this study, in 16 of these protocols the correct nomenclature was used, whereas in 4 protocols it was not used. During the writing of 57 protocols of inspections of things, the correct nomenclature was used, whereas in the remaining 35 protocols a number of mistakes were made in this respect.

In view of the above, it should be postulated that each time the professional nomenclature should be in the description of the procedural and forensic action discussed in this paper.

The tactical principle regarding the signing of each sheet of the protocol of the inspection of the site was applied in 83 inspections, whereas in 17 inspections there were some shortcomings in this respect. In 13 inspections of corpses, each sheet of the protocol was signed, whereas in 7 protocols not all signatures were found. This rule was applied correctly in 23 protocols of the inspection of a person, whereas in 6 such protocols not all signatures were made in the

³⁴ E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, *op. cit.*, p. 229 [in Polish]; 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 Kotecki*, Warszawa 2013, p. 117-122 [in Polish]; K. Juszka, *The principles...*, *op. cit.*, p. 48 [in Polish]. K. Juszka, *The effectiveness of conducting forensic evidence by inspection* (in:) I. Sepiolo (ed.), *An interdisciplinary approach to research in penal sciences*, Warszawa 2012, p. 386.

³⁵ E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, *op. cit.*, p. 230 [in Polish]

attached protocol. On 79 sheets of the protocols of the inspections of things all the required signatures were placed, whereas 13 out of these were not signed by all the participants of the inspection. In connection with the above, the ongoing monitoring carried out by the person directing the inspection should also be postulated with regard to the tactical requirement of signing each sheet of the protocol of inspection.

IV. Summary of the results of studies of court files

The principles for conducting inspections guarantee the tactical correctness of these actions and, as a result, the high detection levels of perpetrators of killings. The research issues presented in this paper pertaining to the observance of the discussed principles, together with taking into account the postulates *de lege ferenda* will strengthen the position of conducting the evidence by inspection as the most important procedural and forensic action.

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Streszczenie

Celem artykułu jest przedstawienie wyników badań własnych 90 spraw sądowych i prokuratorskich w których przeprowadzono oględziny w sprawach o zabójstwa. Prezentacja problematyki badawczej oględzin zostanie poddana analizie z punktu widzenia realizacji zasad przeprowadzania tej czynności.

SŁOWA KLUCZOWE: oględziny, efektywność, process wykrywczy, wyniki badań własnych, miejsce zdarzenia

Summary

The objective of this study is to present the results of the author's own research of 90 court and inquisitorial cases in which inspections were conducted in killing cases. The presentation of the research issues will be analysed from the viewpoint of implementing the rules for conducting these procedures.

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

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