

USE OF TECHNICAL MEANS FOR MAKING THE TACTICS OF IDENTIFICATION MORE PRECISE

Ivan AVRAMOV

“Neofit Rilski” South-West University, Blagoevgrad, Bulgaria
ivavramov@abv.bg

Abstract: *The present article concerns the technical means that are used by the investigating authorities at the institute in relation to the identification and in order the same to emphasize on its evidential influence and importance.*

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1. INTRODUCTION

Identification is frequently met procedural and investigative action which solves identification tasks. It is directed to the solving of two tasks: presence of individual identification or group appurtenance of the object and examination of the collected before that spoken evidences[1]. It can be also done on the basis of material evidences which are actually the photos. The identification lies on the so called mental image of the object and that is why the one who has to identify the object should have perceived that image before that. It is a type of procedural acknowledgement and includes the presentation of at least three similar objects to the one who is going to identify these objects. This is done with the purpose of finding the identity of the one who is subject to identification, as this concerns the main fact – the crime.

The validity of identification shall be determined according to the circumstances of every single case in order to be guaranteed that the identification was free, spontaneous and that it wins people's confidence or in other words – it was not suggested. Following the rules, it is obligatory to be guaranteed that the provided by the law procedure was kept during the process of identification. Laws

usually do not regulate in detail the conditions for carrying out this investigative action. In art. 171, par. 2 of the Criminal Procedure Code of the Republic of Bulgaria are given two requirements – the person who is subject to identification shall be presented together with “three or more people who look like him/her”, as it has to be avoided the prior direct contact with the one who identifies these persons. In par. 6 it is mentioned that “when several accused or witnesses have to identify some people or subjects, the last shall be separately presented”.

The connected with the identification regulation states that there is a limited number of persons who can be shown with the person who is subject to identification. In some countries which are part of the European Union the identification is carried out as the suspect has to be shown with at least two other persons, as this is said in art. 214.1 of the Criminal Procedure Code of Italy, art. 147.3 of the Criminal Procedure Code of Portugal and art. 369 of the Criminal Procedure Code of Spain. On the other hand the psychological tests of the court psychologists states that the possibility for wrong identification increases when the persons who look like the one who is subject to identification are

less than seven. The connected with the investigation practice here shows that any attempt for identification with the participation of less than 5 similar objects is risky and it can be the reason for a wrong result, as this is proved by the psychological tests. Similarity is the second requirement that is given in art. 171, par. 2 of the Criminal Procedure Code. There is a requirement stating that all the persons who are shown together with the person who is subject to identification have to look like him/her. This similarity includes physical characteristics like race, sex, colour of the hair and skin, height, age, figure, clothes, glasses, moustache, beard and etc. Contrary to the recommendations of the court psychologists, the legal regulation requires the participants in the group, among whom the suspect has to be identified, to have a similarity with him/her, although it would be better to exist a requirement for similarity in relation to the initial description, given by the witness for the perpetrator of the crime.

2. MAIN PROCEDURAL TASK

As it has already been noted the main procedural task of the identification is to be proved the identity of persons who are of great importance for the investigation. The witness usually identifies the suspect on the basis of outward features (sex, face, hair, figure, height, race and etc.) which have to be enough for him/her to identify the person. The identification is usually done on the basis of outward features and typical characteristics, as more specifically these are the features of the face which are accepted to be unique, but actually it is not like this. Because of this the identification with the help of scientific means (fingerprints or DNA markers) can only provide a high percentage of certainty. The identification that is done with the using of the traditional methods (identification of the suspect among several other arrested persons or on the basis of a photo) is insecure and leads to the risk of a court

mistake. The existence of a concrete peculiarity of the body (scar, halting, amputated limb) really narrows the circle of suspects and increases the percentage of accuracy. It is also used a way for identification that is based on the voice, but in such cases the percentage of effectiveness and accuracy is lower than the one when outward features are used for identification.

3. PREPARATION FOR THE IDENTIFICATION

The objective and complete preparation for the identification also includes the provision of technical means which are necessary to support the identification process and the results of the same. For that purpose and depending on the object that has to be identified, it can be used the means of the court photography[2] and the voice analysis /photos, video recordings, audio recordings/. Several types of photos are usually made – of the place where the objects that have to be identified are exposed, of the objects that have to be identified, as in case of a found similarity during the investigation process it has to be presented a separate photo of the identified person. In certain cases typical characteristics are given on the basis of which the person has identified the object. If the person who is subject to identification is a found dead body with unknown identity, it shall be made photos which have to clearly present the object of identification. The same is done with the purpose to be found main characteristics connecting with the object and namely: position of the body, place, clothes and etc. In the cases when material evidences have to be identified, it is used a great method for making photos through which it can be given the sizes of the proposed for identification objects.

With the development of photography the technical characteristics of the equipment that is used for making photos have also developed. The further development of

photography provides better conditions for the same to be used in the process of investigation, as this also concerns the process of identification.

4. PHOTOGRAPHY

The use of photography in connection with the identification is of great importance for the objectivity of this investigative action, as it is also an opportunity for objective assessment of the obtained from the same results. The protocol for identification and the applied to the case photos allow to be correctly decided to what an extent the procedural and tactical requirements have been kept, as the same concern the performance of this investigative action during the investigation. The theory includes many points of view about the right way for taking photos of those persons who are not a part of the case and who appear together with the accused, respectively the witness. Some people share the opinion that for that purpose it is necessary to be asked for the explicit consent of those persons. Other people assume that it is only necessary the general consent for participation in the carried out investigative action. We believe the second one should be accepted as more correct because otherwise the taking of photos during the process of identification will be dependent on the subjective opinion of the accompanying persons and in practice it would not be based on an objective basis for carrying out in the work of the investigating authorities. When it comes to the pre-trial proceedings, the identification is also done on the basis of photos when the person cannot be shown. In some cases the person who has to identify the suspect is shown a group photo on which the accused is together with other people. In case that the photo is individual, there are other photos chosen which belong to other people who have similar to the accused features. The principles that are followed in the cases of identification with the help of photos are the same like the principles which apply to

the process of identifying persons who are shown to the witness personally[3].

5. VIDEO CAMERA

There is another method for proving the results of the identification which concerns the use of a video camera. This method is mainly related to the identification of persons who are alive. When it is used the method of video recording, the whole process of identification can be presented – the place, the atmosphere, as well as the behavior of the persons who are proposed to be identified and the one who has to identify them. This gives the opportunity for thinking of the strategy that is used during the process of identification and eliminating the made mistakes. This is exactly the method for finding the physiological and dynamic signs and characteristics of the proposed for identification persons – peculiarities concerning the way of walking, facial expressions and gestures in case that all these are of great importance for finding a similarity during the process of identification. The use of a camera is connected with significantly more difficulties in comparison with the taking of photos. The preparation before the video recording supposes the provision of proper lighting, choosing the places and the sequence of recording. In order to be achieved efficiency and precision the video recording should have sound and explanatory text provided by the investigating authority, as the same has to be shown to the witness, the identified person and the other involved persons. When the video recording is applied to the protocol of identification, the technical characteristics of the video camera and the compact disc have to be noted. Some authors[4] believe that in separate cases it is also appropriate to be prepared and applied to the protocol a plan of the place where the identification is performed and especially in the cases of identifying the way of walking.

6. VOICE RECORDINGS

It comes clear from the Bulgarian criminalistic practice and the foreign[5] literature that more and more often another method is successfully applied for identification of alive people, as this method is based on peculiarities of the manner of speaking, voice and speech in case that the witness has heard the voice, manner of speaking, the used dialect and the vulgar words which are typical for the unknown person. It is then advisable to be made audio/sound recordings. This gives the opportunity for better performance of the investigation and better results of the carried out investigative action. Moreover during the process of examination and evaluation of the results of identification which is done with the help of audio recordings it can be understood the emotional state and the degree of certainty of the witness. After the end of the identification made with the help of the audio recording, the participants in the same process have to be also acquainted with it. In respect of the procedural actions the voice analysis is prepared and applied as an integral part of the protocol in which it has to be mentioned the make and the model of the apparatuses, the type of the compact disc, the speed of the made recording and etc.

7. WRONG RECOGNITION

Identification is associated with cases when wrong conclusions are made, as this is a result of a wrong recognition. This is also proved by some scientific publications in which it is said that the identification with participation of witnesses is suspicious because of the unreliability of people's perceptions in the cases when they are tense (because of the crime) and because of the elements of suggestion.

The ambition all the court mistakes to be brought to nought because of the wrong identification is typical for all the procedural systems. The American system relies on different preventive procedural

instruments – “cross-examination” which includes a requirement stating that it is obligatory to be present a defender for each action of identification of people in order the identification because of suggestion to be avoided. With a protective purpose people have created standards for suitability of this evidential technique – the so called Neil v. Biggers criteria (Neil v. Biggers 409 US 188, 2199-200, 1972), as these standards require to be taken into account different factors in order to be decided to what an extent the identification is reliable. Such factors include the taking into account of the possibility that the witness has seen the perpetrator at the time of committing the crime, the vigilance of the witness, his/her accuracy and precision of the made by him/her first description of the perpetrator, degree of the witness's confidence during the interrogation, the period of time that has passed between the crime and the identification. As a conclusion it can be said that the identification procedures which hide a serious risk of making a mistake contradict “due process of law”. Actually the high degree of certainty, bordering on faultlessness, which is required for any criminal conviction, can be achieved if the accused is identified with the help of the techniques of the scientific analysis (DNA samples) or if the based on outward features identification is also objectively confirmed by other evidences. It comes clear from the mentioned above that the identification in a group should not be accepted as the only proof on the basis of which the person can be said to be guilty.

8. CONCLUSIONS

Practice shows that the given technical ways and means are not enough used or when they are used or applied this leads to inaccuracies and errors. This is a result of the fact that the investigating authorities do not appreciate properly the importance of the court photography, the audio and video recording and the voice analysis as means

for guiding the procedures and the results of the carried out procedural and investigative actions during the investigation. The use of the mentioned scientific and technical means is of great importance for the identification in several directions: it provides important visual material in relation to the case and thus conditions are created for different evaluation of the circumstances in which the identification was performed; it gives chance to be determined whether the proposed objects for identification have been properly chosen or not; it presents the typical identification characteristics of the identified at the time of identification, as though this the investigation is provided with important data in this respect in the cases of subsequent intensive change of the characteristics of the object. These means allow to be easier verified the trustworthiness of the testimony or explanations of the witness, they provide more objective prerequisites and create more favourable

conditions for overall assessment of the person who is subject to identification. Because of this in some legislations /Lithuania, Estonia, Kyrgyzstan/ it is explicitly given the tactical rule for using photos when proposing people for identification.

The identification of people in a way that makes the competent authorities to believe and that provokes their trust excludes the possibility for suggestion. In this way the neutrality of the investigating authority has a special importance because it represents a necessary condition for confirming the validity of the identification. For all the legislations the evidential influence of the identification is connected with the requirement which states that the investigating authority has to be neutral and it has to discard any possibility for suggestion during the process of identification because this is the thing on which relies the trust in the result of the identification.

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