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Personal, criminalmethodical and legal possibilities to prevent mistakes in identity parades

Criminal procedural and forensic researches and studies on presentation for recognition show that there is a two-way problem behind erroneous identification, which sometimes causes justizmord outcomes. On the one hand, official (forensic-legal) overreaches, shortcomings, influences, and, on the other hand, errors of witnesses (due to erroneous observation, image recording, retrieval), or combinations thereof, may occur simultaneously, in parallel.

It is obvious that there is a logical demand (for me) to formulate a list of requirements, since professionally and ethically well-equipped law enforcers can avoid and prevent the listed application errors. In this spirit, at the beginning of my study I will outline the general human conditions. (In the second and third parts I will make methodological suggestions, in the fourth part I will make legal – de lege ferenda – recommendations.)

I. Personal condition to prevent mistakes – the essence of TUSEHURE

I believe that it is possible to formulate a general requirement framework, some kind of value system yardstick, among those carrying out specific investigative measures, including attempts at recognition. I have created an acronym TUSZEHURE, which contains four key elements. (Hungarian original in parenthesis)¹

TU=KNOWLEDGE (TUDÁS)

WED=LOVE (SZERETET)

¹ The TUSZEHURE as my law teacher ars poetica. See more details: Jogelméleti Szemle (Legal Theory Review),/2016/1. 201-206

EN=HUMOR (HUMOR)

RE=ORDER (REND)

In my view, this quartet constitutes the character and ability traits of a fair and effective executive (law enforcement, detective, policeman, customs officer, investigator), which can give grounds for confidence that professional knowledge and ethos will also appear in the performance of insights. Since I have already touched upon them in my other studies I will not repeat the details here.

II. Methodological options for preventing recognition errors

In my already cited 2021 *Iustum Aequum Salutare* study, I listed in 75 points the implementation errors identified and formulated based on my Hungarian and international research. I can formulate the desirable series of methodological recommendations here as a „reciprocal” of these applying recognition. That is, in a positive approach: how to do a recognition well.

A) Requirements before detection is carried out

- 1) The recognizer must be questioned in detail accurately and objectively in advance under calm conditions (calm atmosphere, performance without compulsion, without time pressure), from which the authority can learn relevant, specific, unique data of the case and the person to be recognized (most often the perpetrator), as well as how they would recognize the person, voice, object or corpse at all. (There is no objectivity when we read in the witness record: „*the perpetrator was handsome.*”)
- 2) During preliminary questioning, circumstances of perception (time, season, temperature conditions, distance, duration, light conditions, movements, actions, emotional effects, possible relationship) must be clarified, as well as whether there is willingness on the part of the interrogated person to cooperate in recognition, or whether there are

any obstacles to this, whether there are any exclusionary circumstances that would fundamentally question its use as evidence. For example, have you ever seen a photograph or perhaps a lifelike mosaic ("phantom image") of the perpetrator in the media or at the authorities.

- 3) The perceptual capacity (sensory or other disabilities (hearing loss, deafness, poor eyesight, blindness, mental-mental weakness), stimulus threshold, drug or drug influence at the time of perception, credibility, possible threat, expertise, attention, name and face memory, conscious or involuntary attention, intellectual level, character, stereotypes and prejudices must be checked. If necessary, this shall be done by an attempt at proof.
- 4) The executor must explain the procedure, including the tasks of the recognizer. A premonition should be made to carefully examine the persons presented and compare them with the memories of the person previously and preserved in their own mind.
- 5) Neutral persons (unknown to the recognizer at all) should be informed of their obligation of confidentiality and the process of recognition. They should also be warned not to interfere with the procedure or affect identification. Accordingly, they should look straight ahead with their eyes open, do not rotate, show the number plates in their hands in the same way, do not communicate with anyone, do not do anything to draw the attention of the recognizer or the person in line to themselves or to each other.
- 6) Indifferent persons should also be instructed (and this should be monitored and enforced) to behave similarly to the (potential) defendant during personal recognition. (In case if the bailiff knows the suspected person.)
- 7) Safety factors and prevention of disturbances must be constantly taken into account during the organization of recognition and during implementation. (If possible, at least two authority figures should do the whole recognition: one of them is positioned behind the French mirror and gives the necessary information, taking care of the order

there, while the other takes care of order in the room in front of the one-way vision mirror, handing out the dials that can be held in hand. Ideally, the third bailiff will make the photo and video attachment, record the minutes data.)

- 8) It should be prohibited to show beforehand a photo of any person sitting in the line to the witness. If he notices such a fact, if the member of the authority learns such a fact at the beginning, it should not be continued, the one started should be stopped, because it can only "produce" excluded evidence. (The recognizer selects the person they have seen in photographs or media before.)
- 9) The recognizer cannot see the members standing in line or know any of them before execution. Strict measures should be taken to prevent accidental meeting in the corridor of the police, in a waiting room or in a common space. (If possible, the recognizer should not meet other official bailiffs before starting the act of proof, thus preventing the danger of potential influence and suggestion.)
- 10) If a defendant who already has counsel is on the recognition queue, the counsel with the right to be present must be notified in time (except in really urgent, pressing cases) and in time for him or her to have a realistic chance of appearing. In the case of a juvenile, it cannot be carried out without him.
- 11) The bailiff must also warn the defendant with counsel that the counsel can be present during the procedure. (Non-appearance of the defender after notification does not exclude the possible result of recognition.) If he appears, the defence counsel (and the lawyer of any witness involved) must also be warned to remain silent during the recognition, and that he or she may be present when the witness informs the investigator whether someone has been identified.

B) Recognition implementation requirements

- 12) The member of the authority questioning the recognizer or conducting the recognition must be prepared, patient, thorough, to the point, unbiased, objective, unprejudiced and present throughout.
- 13) Recognition should be carried out when there is still a realistic chance of recognizing it. (I consider it an important tactical recommendation that recognition should be carried out as soon as possible, because over time the probability of success decreases, the recognizing witnesses become uncertain, and the perpetrators change.
- 14) In any case, the recognizer must be warned by the bailiff that he does not necessarily have to choose between the persons in question (objects, sounds) and that the investigation will continue even if he does not select anyone. It is essential to state that the perpetrator may not be among them.
- 15) The bailiff should not disclose to the recognizer the name, history, place of residence, possible arrest, time, place or other personal data of the participants in the queue, or the result of the recognition that has already taken place.
- 16) People (objects) standing in line must not differ markedly from each other in skin color, hairstyle, hair colour, height, coat (beard, moustache, shield, baldness, etc.), age, physique, clothing, wearing glasses.
- 17) Personal "invisible witness" recognition can only take place through a so-called French (or detective) mirror, "covered" or "hidden". The open, "pointing" (visible witness) method can be dangerous for the recognizer (physically and/or psychologically) and is more detrimental than beneficial from a criminal tactical point of view and should be avoided.
- 18) Personal recognition should mask the (potential) face characteristics of the (potential) defendant that do not exist in indifferent persons. (For example, a red mole spot above the eyebrows, a scar next to the

ear.) Or, if this is not practicable, neutral persons shall bear a similar distinguishing mark.

- 19) Situational recognition should be carried out under the same or closest perceptual conditions to reality (light, distance, topography, obstacles) as far as possible.
- 20) Personal recognition involving actions (walking, movement, posture, grimace) should be carried out by all persons standing in line, not just the (potential) defendant.
- 21) The (potential) defendant should not be forced to perform in any activity.
- 22) People standing in line should not show signs from which the recognizer can draw an incorrect or prejudiced conclusion. For example, you cannot see handcuff marks on anyone, or worse, handcuffs, and the holding position of the dial cannot differ from that of the neutral (inexperienced) others who have not yet stood in line.
- 23) After a possible spontaneous (accidental) recognition (e.g. seeing the perpetrator or the person believed to be in a street bustle, police or court corridor), a personal recognition cannot be considered when the person already recognized by the active subject on the street or corridor is standing in the line.
- 24) Recognizing witnesses should not be allowed to communicate with each other or consult before recognition. It should also be previously examined whether there has been communication, electronic data transmission, sending pictures on social media sites, etc.
- 25) It should also be borne in mind that in case of presentations made in person or based on photographs or sounds, the recognizer must not have any acquaintances or relatives in the queue.
- 26) Only one (potential) defendant may be placed in a passive subject line.
- 27) It is not recommended that a detective (policeman) join the queue as an indifferent person.

- 28) Bailiffs should allow the (potential) defendant to choose his own location and indicator number) in the queue set. (The same is valid for a second execution) This notice shall also appear in the minutes.
- 29) It is also a requirement of criminal procedure and criminal tactics that there must be at least three persons, sounds, photographs, objects in addition to the (potential) defendant during selection. So there should be at least two neutral, indifferent, extra, "cotton wool" persons (in Anglo-Saxon literature: "foil" or "filler") in addition to the target person.
- 30) The executor should never give suggestions, influences, deceptions, incorrect (inaccurate, incomprehensible, extensive, leading) instructions to the recognizer. In the same way, he/she cannot use psychological or physical pressure or coercion. The uncertain recognizer should not be nudged, encouraged or pressured in any way.² (A person who rightly refuses to testify should also not be compelled to recognize somebody.)
- 31) Nor should an attempt to recognize be forced on an already uncertain witness, let alone selection at all costs.
- 32) No suggestion about who is „nice“ person, photo, sound to the executive should be done in any way. He/she should not make any affirming, praising comments, gestures, nonverbal acts either during or after recognition. If the recognizer asks about the correctness of his choice, it must be explained that the controller cannot answer, because the recognizing position, free from prejudice and direction, is the only reliable position.
- 33) In addition to too little, there should not be too many persons, objects, documents, sounds, animals, plants, tastes, smells, because

² Several studies have looked at the adverse effects of possible executive reinforcements. Among them, I highlight: WELLS, G.–BRADFIELD, A.: "Good, you identified the suspect": Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology*, 83. 1998/3 360-373

this can be too stressful for the recognizer. If possible, no more than five should be used by the bailiff.

- 34) Recognition should never be done in confrontation. It has a different purpose and methodology, and reliable data cannot be obtained from it.
- 35) The presence of persons outside the legal circle (disturbing active subject concentration) at the recognition shall not be permitted.
- 36) Persons or photographs/objects must be presented simultaneously (together), no sequential (in succession) method is allowed.
- 37) Spontaneous or otherwise known as "natural identification" should not be carried out by the authority, since the potential offender is not aware of it (though he has the right to know about the identification procedure), and thus methodological requirements do not apply in addition to the law.
- 38) Recognition should only be carried out in rooms of such size and height that there is sufficient human space to set up a queue and to place persons comfortably.
- 39) The lighting of the lining room must be suitable so that persons can be seen normally by the active recogniser.
- 40) The bailiff must constantly ensure that the act of evidence is undisturbed, that no unauthorized person can enter , that external noise does not filter in, etc.
- 41) Personal recognition should not be organized when it is predictable that the (potential) defendant will disturb, influence, hinder or block fair, credible execution, for example by intimidating or discouraging the witness. In this case, the photo solution is the correct one. (But this should not be misused!)
- 42) If the eyewitness did not recognize anyone and states this after the first line, he should not be shown a second, replacement line. (If there was a recognition in the first round, then the same list of persons must be presented to the witness in a different configuration, the composition of the person cannot be changed.)

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- 44) It is forbidden to place the same person (e.g. potential or actual suspect) in a new row wall
- 45) It is forbidden to place the same person (e.g. potential or actual suspect) in a new row wall after he has not been recognized by the active subject in the first row. (On another occasion, at a later date, the same target person will not be presented to the same recognizer again, nor among other neutral persons seen before.)
- 46) Recognition should not be carried out too early either, when the investigative interest requires even more that the target person is unaware of the investigation against him.
- 47) There can always be only one active recognizing subject in the executive room. If there are several recognizers, they must be escorted one by one behind the French mirror from a separate circle.
- 48) The record of the taking of evidence must be accurate, true and fair. It must also be revealed whether the defendant had any comments or motions, how the recognizing witness/victim expressed them, in which of the several persons or their photos and voices he has recognized the person he perceived in connection with the crime. Did he point it out, did he say it openly, firmly, certainly, even repeatedly, or, on the contrary, was uncertain or indefinite. A record must be made of the act of proof even if there was no recognition or selection. (If the investigating authority thinks the result was negative.)
- 49) When a witness with closed data management is participating in the procedure must be taken to protect his or her data in the recognition process, and in its recording.

- 50) The recognition indicated in percentage can be at most similarity, it should not be evaluated as identification or recognition by any authority.
- 51) It is part of the fairness of recording if uncertain selection (person, photograph, sound, object) is not considered or evaluated by the authority as effective, recognition or selection. It is advisable to record the proceedings on two video recordings from the outset so that they can be viewed in subsequent evidentiary proceedings (e.g. at the trial). One image shows the recognizer and his surroundings, the other shows the members of the row wall on the other side of the mirror and their behavior.
- 52) The investigating authority shall not allow the recognizing victim to come into contact with the recognised person immediately after successful recognition. It is advisable to conduct a continuous questioning after the act of recognition, in which the recognition result, recognition criteria, characteristics, characteristics and overall effect are detailed. In case recognition fails the subjective and objective causes should stated.

C) Specific photo presentation requirements

- 53) The photographer must warn the recognizer beforehand that: over time, the offender's appearance (hair color, hair length, hair shape, facial hair, skin) may have changed, or it may look slightly different in the photographs.
- 54) Before presenting the photographs, the recognizer must not be influenced by the executor in any way. No suggestion concerning the persons in photos can be made to the actives subject. (You can't imply that these are "bad guys" or "criminals," "registered offenders," etc.)
- 55) Several, at least three photographs should always be presented, it is inappropriate to ask the recognizer questions about a single picture.

Photos should be the same size and displayed for equal periods of time.

- 56) It is not permissible to show multiple photos of one person, either in a row or without a row.
- 57) The photos presented should have the same quality, colour, background, focus, sharpness, lighting.
- 58) The body surfaces shown in the photos must also match. It cannot be a head image of one, a bust of another, a knee-length, and a full figure of a fourth.
- 59) Personal recognition should be preferred as a general rule, we should not accept the otherwise cost-effective solution (simple, fast, cheap, and undoubtedly without situational pressure) if there are no exclusionary circumstances. This should be especially insisted upon if the recognizer talks about the height of the person or about qualities that cannot be recognized or identified from the images.
- 60) The (potential) defendant shown to the recognizer in the photo album, should not be marked in any way (underlining, circles, spelling, names in different colours, shading, starring, etc.)
- 61) Images (as well as people) should only be shown to one recognizer at a time for a line. Even within earshot there can be no other active subject.
- 62) The authorities may only show legally obtained photographs of the (potential) defendant and the indifferent persons queuing. (I note here the general requirement that the human dignity of the participants and their personal rights must be respected throughout the act of recognizable evidence.)
- 63) If the target's condition and appearance at the time of the crime changed significantly during the photo recognition attempt, photos as they were then must be obtained and placed in the queue.
- 64) No verbal or metacommunication is permitted between the selector (most often victim, witness) and other waiting recognizers after viewing the photographs or albums.

- 65) The seconding authority must carefully examine and precisely consider any expert anthropologist's opinion obtained to determine whether it has taken the comparative sample from the same camera angle under the same lighting and motion conditions when comparing the video footage with the real person.
- 66) The report of photographic identification must first of all indicate what hinders the direct/personal recognition, then all photos used during the procedure and their markings, the time and place of the act, those present, as well as what information the person may have shared with the authority, what he said and on the basis of which specific characteristics was the person selected. Especially if they weren't visible in the pictures.

D) Specific video recording presentation requirements

- 67) When playing video recordings, the authority must ensure that the image and sound are synchronized and do not slip apart.
- 68) The video recording should be presented to the recognizing subject at least on a computer screen (even better on a television or projector projector). A mobile phone size creen is not adequate.
- 69) Video recordings to be presented to the recognizer must not be cut, sheared or virtually retouched. Only recordings of individuals taken under similar circumstances should be used.

E) Voice recognition requirements

- 70) In the case of voice recognition, the authority must ensure adequate silence and a completely noiseless environment.
- 71) Measures must be taken during execution to ensure that the (potential) defendant (and any other person speaking in the sound sequence) does not speak in altered, but in natural voice.
- 72) Audio playback can only be done with high-quality, up-to-date technical equipment.

- 73) The extras presented must at least resemble to each other and the target person, and must not differ significantly in age, gender, accent, dialect, timbre or pace of speech.

F) Specific recognition requirements for corpses and objects

- 74) When recognizing a corpse, one must concentrate on the body, only that body has value. It is not acceptable to recognize objects on it.
- 75) Before recognizing a grossly damaged (decomposed) unknown corpse, the so-called corpse restoration (corpse "toilet") must be performed, which brings the damaged, incomplete bodies and body parts to an acceptable, recognizable condition, supplementing them with special sealants. A modern and high-level version of this is facial reconstruction, which can be combined with a recognition attempt for personal identification.
- 76) When assessing recognition (successful or unsuccessful), account should be taken of the fact that significant facial distortions can lead to misidentification;
- 77) Only one corpse or part of its body may be presented, there can be no "companions", no selection.
- 78) The authorities already contact recognizers with a special psychological state on the basis of a presumption of identity, who usually belong to the circle of their relatives, so their preparation for the act of proof requires special tact and caution.
- 79) During their preliminary questioning, they must explain how long they have known the deceased and what identification criteria they can indicate. (For example, medical intervention, traces of surgery, mutilation, cut, scar, missing teeth).
- 80) During the post-identification questioning, it must be disclosed in detail which marks helped the relative (or other acquaintance) recognize the deceased person.

- 81) In case of object identification (including documents), the recognizer must be questioned beforehand whether he or she has any expertise, knowledge, interest, financial interest, emotional attachment to the object, what and how long contact he or she had with it (e.g. permanently as owner or only as a temporary holder), and what characteristics and unique identity characteristics the object had/have. (For example: engraving, engraving tool number, damage, custom repair, scratch, damage, transformation, document transcription, ink use.)
- 82) In case of object selection, it may be particularly advantageous that the person recognizing the object in question has been familiar with it for a long time and thoroughly, for example, the victim's wallet, watch, chain, or the driver with his car.
- 83) Drawing a scene is rarely necessary for recognition. Rather, in relation to objects, it is appropriate to have the recognizer draw the object that needs to be recognized during the preliminary questioning. This is especially required when the person is hardly able to describe in words the general and specific characteristics of the object.

My further proposals for criminal tactics and evidence evaluation

In addition to complying with the requirements listed in Part II, I have a series of suggestions for improvement in the implementation and evaluation of insights. Specifically, they are:

- A. In my opinion, it would be worthwhile to introduce a practical method in the recognition process. In particular, instead of detectives familiar with the case, so-called "blind" bailiffs should be used, who have not dealt with the case so far. These are law enforcement (police, customs investigators, prosecutors) who do not know the (potential) suspect in a given case, i.e. they do not know even in their subconscious mind who the version is aimed at. The photo queue itself (the row wall for persons) is compiled by those familiar

with the suspect and the case. But their role stops there for now, they step out of the process. It is taken over by an official member free from any influence of the case, who must also communicate this fact to the recognizer. I mean, he's just doing the recognition and he doesn't know the case, just like he doesn't know the participants. After all this, he conducts – measuredly, distantly, without influence, since he does not even know or suspect on whom, what and why influence should be focused – organizing and recording the recognition experiment in accordance with tactical-technical recommendations. He then gives the report containing the "result" to the original investigators. Since he has no data on the history, it is not difficult for the "jumper" to fulfill the recommendation that he cannot reveal anything to the recognizers, neither confirmation nor weakening, either verbally, by gesture or by any kind of metacommunication. And he can not do that after the recognitional procedure is over, the same the investigators familiar with the case can not do it either.³

- B. For each "danger sign", the so-called "blank identification" or so-called complete "blank test" can be used, the line of which certainly does not include the real perpetrator in the queue of a person (photo, video, sound, object). Extras above suspicion (neutral persons, photographs, sounds, objects) are included in the queue. The recognizer who is ignorant of this will be taken through the same tactical steps as with the line "filled" in its merits, and thus may result in determining the unreliability of the recognizer. (The mistake or false statement of an overzealous or uncertain witness may come to the surface.)

³ Such a non-bias solution would presumably satisfy the so-called US Supreme Court ruling, the so-called Manson's test, which is used to evaluate findings. The two essential elements of this are: was there any undue influence on the part of the authority during the execution, and is the result of the recognition reliable (was there any distorting factor at the recognizer, in the recognition situation)? See, as a case in the main proceedings, *Manson v. Braithwaite*, 432, US, 98 1977/122

- C. Photo identification should be prioritized over personal recognition when:
- a. serve to identify a person fleeing, hiding or seeking to evade proceedings;
 - b. b) it can realistically be expected that recognition would be hindered or rendered impossible by the target person's aggressive behaviour, or that the recognizer would be grossly influenced or threatened;
 - c. compiling a personal decent queue that meets criminal tactical requirements would involve disproportionate difficulties or excessive costs (or not at all possible due to special characteristics);
 - d. the person to be identified has no knowledge that he or she is under investigation at all;
 - e. e) the culprit, potential suspect is not yet known by name and the investigative authority's photographic register can help collect data;
 - f. f) there is so much evidence already in the case that personal recognition has little probative value and subordinate importance;
 - g. (g) the potential defendant (target to be identified) has already been buried.
- D. As a matter of principle, I believe that it is pointless to talk about percentages in connection with a recognition, since there is no definite value for body parts, for the level of recognition. Every "recognition" that can only be defined as a fraction of a percent only results in similarity. No more. Certainty, true recognition, can only be expressed in one way and number, the total, that is, 100%. However, this does not need to be written out in any report, since the result is that the recognizer really "recognizes" the culprit in someone (either in a picture or as a living person). Even if it is wrong,

which may only be revealed afterwards or, unfortunately, will not be revealed.

- E. If the recognizer does not select anyone from the queue, it does not mean that the real perpetrator is not among the persons (sounds, photos, video recordings). According to scientific research, the same conclusion should be drawn when the recognizer firmly states that the culprit is not in line. A negative recognition claimed to be certain (i.e., that there is not one of them) is no stronger—no matter how appealing it may seem at first glance—than a simple no choice. It is precisely because of the numerous uncertainties and weaknesses of the ability of (eye-ear) witnesses to perceive, record (remember, store) and return (reproduce, recall and reproduce memory). This seemingly exculpatory fact is first of all important from an investigative tactical point of view: a potential target cannot be excluded from the circle of perpetrators with reassuring certainty. Secondly, the findings of psychological-forensic research must also be taken into account when assessing judicial evidence and in comparison with other evidence.⁴

It is also a research result that, unfortunately, selection determination is not a measure of reality. Super-certain recognizers are also wrong. Some victims, when it turned out for certain that they chose the perpetrator wrongly, believe in hindsight that they saw him, met him, were the culprit.⁵

⁴ "Courts should be mindful of the effects of suggestive procedures, which may facilitate misidentification. It should be borne in mind that these suggestive procedures not only make the eyewitness presumptuous of his own certainty, but also magnify the eyewitness's account of how good his observation was. It would be helpful if courts would use some thoughtful criticism in cases of suggestive procedure" Elek, B.: A vallomás befolyásolása a büntetőeljárásban. [Influencing testimony in criminal proceedings] Debrecen, Tóth Kiadó, Debrecen, 2008. 71

⁵ Glanville Williams noted that there is no complete security. The mere fact that three or four witnesses recognize a suspect does not provide any assurance that they are adequate,

- F. Even in the case of an optimal recognition protocol that complies with all legal and tactical requirements, incorrect person, object and voice identification can occur due to subjective errors of active subjects due to numerous circumstances. This scientific fact must always be calculated and kept in mind when weighing up evidence. Particular caution and caution should be exercised when the recognition result is self-contained as incriminating data.

Legal options for preventing recognition errors – de lege ferenda proposals

- A. I raise it as a proposal for legislation: despite the fact that we can read the most detailed legislation on the specifically named recognition in the history of Hungarian criminal procedure, it is not stated in Be. (Act XC of 2017, ie. Hungarian Criminal Procedure Law) that it is necessary to retain recognition under the original perceptual conditions if possible.
- B. As a second "de lege ferenda" proposal, I would like to point out that it would also be advisable to lay down in the legal wording – which has not found any formation at all in court decisions based on enforcement – that the person performing the recognition must inform the recognizer (instruct him):
 - a) it is not certain that the offender is among the persons to be identified;
 - b) is not obliged to choose (selection at all costs);
 - c) the investigation continues even if no one is selected;
 - d) he/she will not receive feedback on whether, if at all, the choice was "correct";

especially when all have been subjected to suggestive identification procedures on all occasions. Cited in WALL, P.: Eye-Witness Identification in Criminal Cases. Springfield, Illinois, USA, Charles C. Thomas Publisher, 1965. 9-10

e) Points a-d) shall also be applicable in the case of recognition of sounds, objects, photographs and videos, as well as the fact that over time the offender's appearance (hair color, hair length, hair shape, facial hair, skin) may change or look slightly different in photographs and video recordings.⁶

C. In concluding Part IV, I also formulate my message to the legislators. I consciously use the recognition attempt instead of recognition written in the Be. By way of justification, I would like to say that in the course of my scientific research I came to the conclusion that the current name of the dual act of evidence – forensic and criminal procedural – is suggestive and can further influence. The very word "presentation" encourages the recogniser, most often the victim witness of the crime, who often wants to comply with the authority, to choose from among the persons presented (objects, sounds, photographs, video recordings, etc.). To be sure to choose! And the compulsion to comply can take a dangerously justismatic turn, as I have repeatedly stated.

I also recommend the word „experiment“ because recognition is often situational. Then the circumstances must also be adapted to the criminal situation. Similarly to the attempt at proof, efforts should be made to make it as similar as possible to the original state, since only then can the authorities check whether the perpetrator's face, movements, clothing, etc. can be recognized at all. And only

⁶ In England, Roy Malpass and Patricia Devine showed that if they warned the recognizer that he or she did not necessarily have to choose between the persons in question and that the perpetrator might not be present, they reduced misrepresentations. Shepherd showed this in his study. According to his studies, these warnings reduced false detections from 28% to 4%. See LLOYD-BOSTOCK, S.: *Law in Practice-Psychology In Action* for these studies. Leicester, United Kingdom, The British Psychological Society, 1988/16.; MALPASS, R.–DEVINE, P. Realism and Eyewitness Identification Research. *Law and Human Behavior*, 1981/4, 347-358

under the same conditions of sight, hearing, perception should possible selection of persons be attempted.⁷

Final Thought

I hope that my present study (and the research behind it) has highlighted the empirical fact that every demanding law practitioner – investigator, prosecutor, lawyer, and ultimately the judge – who strives with great caution, conscientiousness and error-free and strives to avoid justismord with reason and heart must act with utmost caution and without error when carrying out an attempt at recognition with a legal, forensic and psychological dimension and evaluating its results as evidence.

⁷ According to the dictionary of American legal terms, it is also an experiment: „LINEUP a police procedure in which a person suspected of a crime is placed in a line with several other persons in similar dresses, height, and ethnic group and a witness to the crime attempts to identify the suspect as the person who committed the crime”. GIFIS, S.: Law Dictionary. 5th Edition, Barron’s, New York, 2003. 299