

Messages of Personal Identity Attempt in Foreign Criminal Rules

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ABSTRACT Research worldwide and in our country (Hungary) have revealed that false personal identities play a prominent role in “justizmord” cases. That is why it is worthwhile having a closer look at identity rules and methodologies of other countries in this respect as well. In this study, the author examines the Slovenian, Austrian, Swiss, Serbian, Croatian, and distant (but, as it turns out, much the same) Turkish norms, all embedded in the continental legal system just like the Hungarian ones. Based on the legal details and implementation recommendations there, the researcher formulates at the end of his study the lessons learned from the models, the legal and forensic development opportunities available to us, the conclusions for efficiency and fairness, and the current and future messages to legislators and practitioners.

KEYWORDS errors, false identification, identity parade, investigation, justizmord, line-up, miscarriage of justice, prevention

1. Introduction

The criminal justice system of all rules of law seeks to avoid the worst possible outcome, namely a miscarriage of justice. Unfortunately, it still does happen sometimes. I will present some Hungarian examples in this study in order to support my statement.

In 1957, the court sentenced János K. to death for a sexually motivated homicide in Martfű (a town), who was then given a lifetime sentence. He had already served 11 years in prison, when it turned out that the crime had been committed by Peter K., who was prosecuted, then sentenced to death, and executed in 1968.

In 1984, the public prosecutor's office charged János M., a resident of Szolnok County (Hungary), with the murder of a little girl. He was not legally sentenced to death, however, in the lengthy criminal proceedings, the case went through several forums and he was finally acquitted in 1986.

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In 1995, Dénes P. was sentenced by a court in Heves County to 6 years imprisonment for attempted personal injury and robbery. Along with his arrest, the accused had already spent 26 months in prison when it turned out that the perpetrator of the crime against the elderly woman had been someone else and who was then held accountable for the crime.

On May 9 2002, the court sentenced Ede K. to life imprisonment as the perpetrator of a robbery at the Erste Bank branch in Mór (a town), claiming 8 lives. A few years later, exactly in 2007, it turned out that the crime had been committed by two other persons.

I present all this in order to make it clear in my introduction: miscarriage of justice does exist in our days as a phenomena, and its danger persists in Hungary as well. Therefore, it is in our elementary interest to develop prevention methods in this field and to explore what the cause of such fatal mistakes may be.

Both foreign and Hungarian research (and the real cases above) have revealed that the presentation behind recognition plays a prominent role in “justizmord” cases.¹

That is why it is worthwhile looking at identity rules and methodologies in other countries as well. In this paper, I examine the Slovenian, Austrian, Swiss, Serbian, Croatian, and distant (but, as it turns out, much the same) Turkish norms based upon the continental legal system like ours. Based on the legal details and implementation recommendations there, I formulate at the end of my study the lessons learned from the models, the legal and forensic development opportunities available to us, the conclusions for efficiency and fairness, and the current and future messages to legislators and law enforcements.

2. Personal identification procedure in Slovenia

The Criminal Procedure Code of our neighbouring country also names and specifies the main rules of identification (identity parade). These are the following:²

242 Art

(1) Where it is possible for a witness to identify a person or object, they shall first be asked to describe them and to identify them. Only then can the witness be shown the person, together with persons unknown to others, or the object, preferably with other objects of the same kind. The same procedure should be followed for identification with other senses (hearing, touch, smell, etc.).

¹ See more about these in: Csaba Fenyvesi, *A kriminalisztika tendenciái* (Budapest – Pécs: Dialóg Campus Publishing House, 2017), Chapter VII.

² Criminal Procedure Act 2007 (7 September) Official Journal of the JMSZ 4/77, 14/85, 74/87, 57/89 and 3/90. (In translation from English.)

Messages of Personal Identity Attempt in Foreign Criminal Rules

(2) Prior to identification, the witness shall be warned in accordance with Section 240 (2).

(3) The judge conducting the investigation, who ensures the identification process, must make sure that the witness does not see the person or object he / she will identify.

(4) A record of the identification shall be made and a group photograph of all persons examined shall be attached.

242 / a. If the life or physical integrity of the person carrying out the identification or a close family member (Article 236 § 1 (1) to (3)) is seriously endangered or it is possible that the identified person may influence the identification process, the identification shall be carried out in such a way that the person carrying out the identification must not be seen by the person to be identified.

80. Art

(3) In case of searching for an inspection, place or person, or identifying a person or object (Article 242), the document shall contain the relevant data of the act. In case of identification of separate objects, the description of the objects, the size of the traces must be contained. If sketches, drawings, drafts, audio or video recordings have been made, they must be included and attached to the file.

178 Art

(4) The prosecutor, the accused and his or her counsel may participate in the examination of witnesses. The judge conducting the identification may order that the accused be removed from the interrogation if the witness refuses to testify in his presence or if the circumstances show that the witness would not be able to tell the truth in his presence. Or in cases where an appearance will be required after the witness has been questioned. The accused may not be present at the examination of witnesses if they are under the age of 15 and have been the victims of any of the offenses under Article 65 § 3. The injured party may be present at the hearing of witnesses if he or she does not attend the main hearing.

230. Art

The accused must first describe the objects that can be linked to the crime or use it as evidence, and only then can it be presented to him as identification. If the objects cannot be delivered to the defendant, the defendant must be transported to the place where the objects are.

We can read the following points in the regulations on the tasks and powers of the police:³

Article 46

(Identifying a person from a photo)

(1) Police officers may act to identify a person on the basis of a photograph in order to locate the perpetrator in a criminal or offence case in order to establish the identity of an unknown person.

(2) Before carrying out the identification procedure, the police shall warn the person about the rules for the protection of personal data. That person shall protect the confidentiality of the data which come to his or her knowledge during the identification procedure.

(3) Police officers shall first request the person who carries out the identification to record and present the physical characteristics that distinguish the person from other persons during the identification procedure.

Only then can they show images along with other similar images to the ID of people who are unknown to the person performing the identification.

The police officer who conducts the identification must make sure that the identifier does not see a picture of the person in question or does not see that person before identification.

(4) The police officer shall make an official record of the identification procedure, which shall include which images the identifier has seen.

(5) Police officers may use photographs taken from other files of the persons photographed or in other lawful ways. Photos of individuals that are shown during identification must be selected based on the previously provided description of the person.

(6) When several persons participate in the identification procedure, it shall be conducted separately for each person.

3. Personal identification procedure in Austria

The Austrian Code of Criminal Procedure also recognizes the recognition procedure, and its provisions can be found in § 163.⁴

§ 163. (1) A witness may compare several persons - openly or secretly - with each other, from which he or she may select the suspect. Prior to this, the

³ Police Tasks and Powers Act: Official Gazette of the RS, No. 15/2013.

⁴ Österreichische Strafprozessordnung (StPO) Criminal Procedure Act 1975. StF: BGBl. No. 631/1975 (WV).

witness should be asked to describe the distinguishing features of the suspect: this description should be as close as possible to the person being compared. The witness should then be asked to make a statement as to whether he or she recognizes the person and what he or she recognizes. This process should be recorded and assisted by appropriate imaging techniques.

(2) The same shall apply to the examination of photographs and the hearing of sound samples. Even if a witness recognizes an important object that serves as evidence, he or she should first be asked to describe that object and, if necessary, its distinctive features.

(3) In addition, the accused or witness may be confronted with other witnesses or tribunals if the relevant allegations differ in material circumstances and it is presumed that the contradictions can be clarified. People who stand side by side and have certain circumstances that are different or have conflicting statements should record the response from both sides.

(4) If the accused is summoned for comparison, his or her counsel shall be given the opportunity to participate.

4. Personal identification procedure in Switzerland

According to the Swiss Code of Criminal Procedure:⁵

Rule 146: Interrogation and comparison of several persons

(1) Interviewers shall be interviewed separately.

(2) Criminal authorities can compare individuals, including those who have the right to refuse to testify. The special rights of the victim are reserved.

(3) The authority may summon the interrogated persons who, after the completion of the interrogation, are likely to face other persons, to remain in the place of the proceedings until the confrontation.

(4) A person may be temporarily excluded from the proceedings if:

(a) there is a conflict of interest, or

(b) that person shall be heard during the proceedings as a witness, information officer or expert.

Article 152: General measures to protect victims

(4) A comparison may be ordered if

(a) the interests of the injured party so require

(b) it is mandatory due to a significant law enforcement interest.

Article 154: Special provisions for the protection of children as victims:

(1) A child within the meaning of this Article who is under the age of 18 at the time of the questioning or comparison shall be the victim.

⁵ Schweizerische Strafprozessordnung; SR 312. (Effective from 5 October 2007).

- (2) The first hearing of the child shall take place as soon as possible.
- (3) The authority may exclude a confidential participant from the proceedings if it may exercise decisive influence over the child.
- (4) If it is apparent that the interrogation or comparison is likely to cause severe psychological distress to the child, the following rules shall apply:
 - a) A report involving the suspect may only be ordered if the child expressly requests it.
 - (b) As a general rule, a child may not be questioned more than twice throughout the proceedings.
 - (c) The second hearing shall take place only if the parties have not been able to exercise their rights at the first hearing or if this is unavoidable in the interests of the investigation or the child. Where possible, recognition will be done by the same person who conducted the first interview.
 - (d) Interrogations shall be carried out in the presence of a specialist: a detective trained for that purpose. If no comparison is made (recognition), the interrogation is recorded with images and sound.
 - e) The parties shall exercise their rights through the interrogator.
 - f) The interviewer (interviewers) and the trained professional record their own observations in a report.

5. Personal identification procedure in Serbia

The Serbian Criminal Procedure Code provides the following guidelines.⁶

VII. Chapter 1 (Basic Guidelines. Evidence Procedure 2. Presentation for Recognition. Face or Object Recognition)

§ 90. If it is necessary to determine whether the interrogated person recognizes the given object or person, or the properties thereof, which he or she has previously described, the object or person in question shall be shown together with other objects and persons whose properties are unknown to him or her. These are similar to those described above. The interrogated must then state whether he or she is certain to recognize the object or person, or if he or she has a certain degree of probability that he or she will recognize it. If the answer is positive, they should point to the subject or person.

If the person or object is not available in Method 1, the suspect must be shown an image of the object or person, along with several similar objects or persons unknown to him, whose main characteristics are similar to those described by the interrogator.

Nos. 1 and 3 recognitions may also be made by sound in accordance with the provisions.

⁶ Serbian Criminal Procedure Code: “Official Gazette of the Republic of Serbia,” 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014 (based on a raw translation by Andrea Dernik).

6. Personal identification procedure in Croatia

Article XVI of the Croatian Code of Criminal Procedure Chapter deals with acts of recognition.⁷

XVI. Chapter Investigation Phase (Interrogation of Suspect 3 and Presentation for Recognition 5)

Article 301

(1) Recognition is the recognition by a suspect or witness of a person, object, place, sound, mode of movement or other characteristic based on a comparison with another person, object, place, sound or mode of movement. The objects that help to clarify the case are presented to the suspect and, if necessary, to witnesses and experts.

(2) Before being presented for recognition, the person shall be asked whether the person or object in question has been shown live or in images, on a computer, in the form of data collected or otherwise, or is aware of circumstances which may affect him or her in the course of the recognition. The answers must be recorded.

(3) The recognizing person shall describe the object and person in question in as much detail as possible, as well as the features that distinguish it from other objects and persons. At the same time, he or she should describe the circumstances in which he or she has perceived it and give a rich description of what he or she would recognize.

(4) The recognizer shall then be shown the person or object, the objects presented for recognition, together with any person or object unknown to him or her. Location recognition is done by the person first describing the location in detail and then pointing out or showing it on a recording and live.

(5) With the written consent of the person, the presentation for recognition may be performed by appropriate technical means. With programs that allow him or her to present simultaneous photo or audio-video recordings, see (3) in accordance with the paragraph. This type of recognition presentation can also be recorded with an audio-video device.

(6) If the suspect is the confessor, Articles 273 and 275 of the Act rule, but if the suspect is presented for identification, he or she will be warned of the right to be assigned a defence lawyer. A defence attorney may be present at the

⁷ Consolidated text of the Croatian Code of Criminal Procedure, published in the Official Gazette 152/08, 76/09, 80/11, 91/12) and Decisions of the Croatian Constitutional Court 143/12, 56/13, 145/13, 152/14, 70/17 and 126/19) (based on a raw translation by Andrea Dernik).

presentation for recognition. In that case, the provisions of Article 273, including paragraphs 2, 3 and 5, shall apply *mutatis mutandis*.

If the recognizer is a witness, the description of the recognition is given in No. 288 and it shall be governed by the provisions of Article 2 thereof. (3) and (4) pursuant to paragraph.

(7) A report shall be prepared on the presentation for recognition and an appropriate record shall be made of all persons, objects and places presented. The recordings are made by an expert assistant.

7. Personal identification procedure in Turkey

There are two law enforcement forces in the country bordering Europe and Asia: the police and the gendarmerie. Their jurisdiction is divided on the basis of geographical separation. The police have jurisdiction in all provinces and districts, and outside the provincial and district municipal boundaries, it is the gendarmerie that have jurisdiction. In other words, places that are outside the purview of the police are within the purview of the gendarmerie. The investigative (evidence) actions of both organizations are based on the same legislation.

Article 6 of the Code (Law No. 2559), adopted on 4 July 1934 on law enforcement duties and competencies, provides guidance on identification.⁸

According to the content of this and related interpretations:

- (a) A 6/11. “Before initiating the identification procedure, the statement of the person who will identify the offender shall be recorded as a notification.”
- (b) The victim or witness is asked about the offender's gender, age, colour, height, weight, physical disability, eye colour, hair, beard. In doing so, the law enforcement officer should not ask directed questions.
- (c) It must also be ensured that the characteristics of the description are objective, for example, descriptions that “the perpetrator was handsome” should be avoided.
- (d) If there is more than one suspect, the identification procedure must be carried out separately for each suspect.
- (e) The identification shall be repeated at least twice. Although not required by law, the persons subject to identification must be the same as in the first identification procedure. Because if the people exposed to identification change, it can negatively affect the person identifying them. There is also no statutory minimum time frame between the two identification procedures, but at least the first identification procedure must be completed and the second formula

⁸ The original Police Duties and Competences Codex was supplemented on 16 June 1985 by Regulation 3233/7. with article number. On 02/06/2007, the 5681/5. amended by Article. (Translated from Turkish into English: Ahmet Murat.)

established. By doubling, the identifying person is given the opportunity to think twice and remember the event he or she witnessed.

(f) In general, a suspect has the right to a lawyer (authorized or seconded) before, during and after the identification procedure. (Rule 150 (1)) However, the absence of a defence counsel does not render proof of identification inadmissible.

(g) In the most common “live line-up” identification in practice, not only the suspect but also other people are introduced to the witness (victim) and asked to choose from among them. (The photo identification method is exceptional.)

(h) A 6/12. An additional point states that: There must be more than one participant in the identification procedure, they must be of the same sex and similar in appearance. For example, their age, height, weight, dress. If necessary, changes can be made to the identification procedure regarding the appearance of the suspect. During the identification process, each person holds a number in their hand.

(i) The “line-up” method can be performed in two ways: simultaneously or sequentially. Simultaneous setup is the traditional (and almost exclusively used) method of identification. In this method, the people who are identified (or the photos taken of them) are presented side by side. In the sequential (allowed but not really applied) setup method, the persons (or photographs) are presented one after the other to the active subject, who, if he identifies the person or photograph presented to him, the other people (or additional photographs) do not appear.

(j) There is also a so-called “show-up” method, where the authorities present only the suspect as a witness to the incident or a victim of the crime. Here you cannot choose from more than one person, but only to decide whether to identify the person presented to him or her as the perpetrator or to state that he or she is not the perpetrator.

(k) If the suspect is personally unable to participate in the identification procedure for any reason, the photographic identification method may be used (Article 6/16). The victim or witness is shown a photograph of the suspect along with photographs of similar people and asked if: Is the perpetrator among the people in the photographs? (Consecutive photo shows are not excluded either, but the former is used in Turkish practice.)

(l) There is also video identification, in which case the victim or witness is shown the videos of the persons being identified and asked: Is the actual perpetrator of the incident in the video? In this identification method, the suspect under identification is asked to look at the camera so that the face and shoulders are visible first. They are then asked to slowly turn from left to right and show their side profile to the camera, and finally they are asked to turn and show their backs to the camera. The video recording of the suspect's face, side and back profile is recorded in this way and combined with videos of other people whose appearance, gender, age, etc. are similar and made by the same

method. Video identification is performed as a “sequential identification” method because each video can only be displayed one after the other.⁹

(m) Acoustic (voice) identification may occur if the witness or victim of the incident did not (could not) see the face or characteristic external features of the perpetrator but heard his voice. (For example, the perpetrator covered his own face with a mask or covered the victim's eyes. It is also possible that the crime was committed over the phone or that the victim / witness is visually impaired. In voice-based identification, it has to be decided whether any of them has recognized the voice of the perpetrator.

(n) The most common form in life is listed as “Covered Identification”. (Article 6/13).¹⁰

In this case, those to be identified will not see the victim or witness. It is solved with a mirror that provides one-way vision. Persons subject to identification are in one room, while victims and witnesses are in another one. Between the two rooms there is a built-in (so-called Venetian) mirror that allows the victim and witness to see the persons exposed for identification while preventing them from seeing him / her in turn. (In contrast, open identification exists, but is hardly used, in which the people subject to identification see the victim, the witnesses. There is no one-sided mirror or similar device here, and both sides can see each other.)

(o) “Natural identification” means the method by which a suspect is identified in his / her natural habitat. For example, walking down the street, shopping, or sitting in a coffee shop. Natural identification should be considered as covert identification, as the suspect subject to identification does not know who identifies him / her. Legally, however, this method should not be used because the Code of Police Duties and Powers (indicated above) states that a suspect who has been identified must always be aware of the identification procedure.

(p) A “non-blind line-up” is a method in which the identified victim or witness and the law enforcement officer involved in the proceedings know only who the suspect is being identified.

(q) The “single blind line-up” refers to a method in which the victim or witness does not know who the suspect, who is being identified, is aware of only the law enforcement officer involved in the proceedings.

(r) The “double blind line-up” refers to a method in which the victim or witness and the law enforcement officer involved in the proceedings do not know which of the suspects is being identified. The advantage of the double-blind method is that it is aimed at finding the truth, because when the law enforcement officer involved in the identification procedure does not know the suspect, there is no

⁹ Article 81/1 of the Code. If the offense is punishable by two years' imprisonment or more, the prosecutor shall, on the order of the public prosecutor, take a picture of the suspect and measure his / her height, take his / her fingerprints, palm prints and / or the recognition of the accused; as well as a sound sample and video film must be prepared and inserted into the file.

¹⁰ 6/13. “The identification person and the persons subject to identification shall not see each other.”

danger of manipulating the victim emotionally or unconsciously with his / her words, behaviour and gestures, or the witness.

(s) “Blank identification” is used to check the reliability of the victim or witness. In it, they are introduced to people who are not among the suspects, and this information is not shared with them, they are only warned that “the actual perpetrator may not be in the group.”

(t) In the case of a method of identification by testimony, the victim or witness may be asked to tell what he or she knows about the incident during the identification procedure. In this case, there is both an “identification” and a “statement” on the side of the victim or witness. These two separate actions are combined to produce a single report called “identification with testimony”.

(u) Article 6/15 of the Law on Law Enforcement and 17: a report on the identification procedure shall be drawn up. Also, a visual note should be written and photos and videos of identified individuals attached.

(v) The most important thing that should be clearly stated in the identification report is whether the identifying person has identified someone as the perpetrator. For example, “Person 4 was identified as the perpetrator by the victim or witness.” If the identifying person did not identify anyone or was unsure, this should also be clearly mentioned in the identification report.

(w) Those who choose not to testify as a victim or witness shall not be compelled to identify.

(x) The identifying person should be warned that “the perpetrator is not necessarily among the people being identified.”

(y) For photographic identification, several photographs must always be presented together or separately. Multiple (different) photos of the same person cannot be shown. Photos of different people should be the same size and have the same characteristics.

8. Conclusions, suggestions, messages

Before noting the conclusions and development suggestions arising from the above, I will only cite the XC. of 2017 on Criminal Procedure as a reminder and as a basis for comparison. (hereinafter referred to as Cp.). These are in particular:

§ 210. (1) A court, public prosecutor's office or investigative authority shall order and hold a presentation for recognition if it is necessary for the purpose of recognizing the person or object. At least three persons or objects shall be presented to the accused or witness for identification. The person or object may be presented to the accused person or witness by image, sound or video and audio recording, unless otherwise available.

(2) Before being presented for recognition, the person from whom recognition is expected shall be heard in detail about the circumstances in which he or she perceived the person or object in question, his or her relationship with him or her, and his or her characteristics.

(3) In the case of the presentation of persons, persons who are independent of the case and who are unknown to the recognizer and who have the same characteristics as the person in question in the main characteristics, in particular of the same sex, body shape, skin colour, care and clothing are put in a group with the person in question. In the case of objects, the object in question must be placed among similar objects. The location of the person or object in question within the group must not differ significantly from any other and must not be conspicuous.

(4) The presentation shall be carried out separately in the absence of each other in the case of several recognizable persons.

(5) If the protection of a witness so requires, the presentation for recognition shall be made in such a way that the witness presented for recognition cannot recognize or perceive him or her. If the personal data of a witness has been ordered to be kept private, this must also be ensured at the time of presentation.

§ 213. (1) The rules of the inspection shall apply *mutatis mutandis* to the demonstration experiment and the presentation.

(2) The court and the prosecutor's office may also use the investigating authority to conduct an inspection, an attempt to prove evidence and a presentation for recognition.

(3) The accused, witness, victim and other persons, in particular those who have or possess the object of the inspection, shall submit to the inspection, the attempt to prove it and the presentation for recognition, if the object in their possession shall be subject to inspection, it must be made available for the purpose of an attempt at proof or presentation for recognition. In order to fulfil these obligations, the accused may be coerced, the victim, witness and other persons may be coerced or fined.

(4) As far as possible, video and audio recordings shall be made of the inspection, the test of evidence and the presentation for recognition.¹¹

A) Despite the fact that in the history of Hungarian criminal procedure we can read the most detailed (Pc.) legal regulation on the recognition named separately, it does not state that it is necessary to keep the recognition in the original circumstances of detection.

B) Also, as a suggestion “*de lege ferenda*”, I would suggest that it would be expedient to state in the legal wording that the person performing the recognition should call the recognizer (he or she should instruct):

(a) the perpetrator may not be among the persons to be identified;

b) there is no obligation to choose (selection at all costs);

(c) the investigation shall continue even if no one is selected;

¹¹ Sections 383 and 393 of the Criminal Procedure also refer to the possibility of the presence of a defence counsel. 100/2018 (VI. 8.) (Government order) on the detailed rules of the investigation and preparatory procedure prescribes further detailed disclosure rules for the investigating authorities.

d) you will not receive feedback on whether your choice was “correct”, if at all;
(e) the warnings applicable to the recognition of objects and photographs shall be those set out in points (a) to (d) and that the offender's appearance (hair colour, hair length, hair shape, facial hair, skin) may change over time or look slightly different in the photographs.

C) In my view, both the words “recognition” and “presentation” (individually and together) encourage the recognizer, who often wishes to comply with the authority and is, most often the injured witness of the crime, to choose from among the persons presented (objects, sounds, etc.) and it is important to make sure that he or she really does decide to recognize someone. And the coercion of conformity can have the erroneous consequence that the recognizer responds even when he or she is not sure when he or she has only perceived a similarity, or simply infers from external signs that he or she thinks he or she is recognizing the real perpetrator. However, his or her mistake can even lead to a court order, as it is difficult to refute his or her selection in theory, and in practice it is almost impossible if the chosen one does not have a substantive alibi justification. Therefore, in the following example of an attempt at proof, it would be more appropriate to speak of an “attempt at recognition”, that is, an attempt at recognition rather than a demonstration.

D) In the field of criminal tactics, it would be worth considering the so-called ecological recognition method. In essence, it differs from the traditional procedure in that the witness is led, more or less randomly, alongside the defendant in the natural environment. In this case, the target person who may be identified is asked to be in a place where more than one person is present, e.g. in a department store in a busy street. There, the witness is accompanied with the intention of trying to recognize and, select the perpetrator he or she has seen before. The fact that the persons to be compared are not chosen in a targeted manner is usually offset by the large number and variety of those present. However, it is also possible that passers-by will be “enriched” by the authorities with targeted persons for comparison. The advantage of this method is that it is more relaxed, more dissolved than the presentation for classical recognition, and the risk of the target person - due to his or her internal tension or the involuntary attention of the persons selected for comparison (“cotton wool”, “stuffing”) is minimized – it stands out from the group.¹²

E) I also propose a method that can be implemented in practice as a crime tactical, pre-influenced proposal. In doing so, instead of forensic experts familiar with the case, so-called “blind” bailiffs who have not dealt with the

¹² See G. L. Wells, and R. Lindsay, “Improving Eyewitness Identifications from Line-ups: Simultaneous versus Sequential Line-up Presentation,” *Journal of Applied Psychology* 70, no. 3 (1985): 556–563.; A. M. Levi, “Some Facts Lawyers Need to Know about the Police Line-up,” *Criminal Law Quarterly*, no. 4 (2002); A. Schäfer, “Sequenzielle Video-Gegenüberstellungen,” *Kriminalistik*, no. 12 (2001): 797–798.

case so far are employed. (As we have read above under Turkish rules.) These are law enforcement officers (police, customs, prosecutors) who do not know the identity of the (potential) suspect in the case, i.e. they do not even know which version is aimed at. The line itself is put together by forensicists who know the suspect and the case. But their role here stops for now, they leave the process. It is taken over by the non-compliant employee, who must also communicate this fact to the recognizer. By this, I mean, he or she is just doing the task of recognition and he or she does not know the case, nor the participants. After all this, he or she conducts - in a measured, distant way, without influence, because he or she does not know, does not guess who-why-what he or she should focus on - organizing the recognition experiment in accordance with the tactical-technical recommendations. He or she then passes the report containing the “result” to the forensic scientists. With no record of history, it is not difficult for a “pop-up” to recommend that he or she should not reveal anything to recognizers, neither affirmation nor contradiction, either verbally, or with a gesture or any kind of metacommunication. And one cannot do that even after being recognized, just as investigators who know the case cannot do it.

F) The recognizer should strive for as little communication as possible during the presentation. The instructions should be short, understandable, and accurate.

G) It is advisable to provide the witness' or victim's personal description to the (potential) suspect's legal representative before the search. In this way, there is the opportunity to comment on the remarkably different, suggestive setting and, if necessary, complain.

H) It may be of tactical significance to accurately mention and correctly record how the recognizing witness expresses which of the several persons he or she has recognized is the person who was perceived in connection with the crime. Whether he or she points out, states openly, firmly, surely, or even repeatedly, or, conversely, is uncertain, indeterminate.

I) In the case of uncertain or anxious identification of a person, repetition based on another grouping of the same person has no effect, instead the so-called “empty” formation is desirable. At this point, the (potential) suspect is not included in the group either (only individuals above all suspicions) and thus the witness is asked to be identified.

J) It is an important criterion to check in advance that none of the people in line are familiar with the recognizer (most often the victim).

K) In the case of photographic identification, several photographs must always be presented to the recognizer and this must be done during the preliminary investigation data collection. (Even during the suspect's earning period.)

- L) Multiple (different) photographs of the same person cannot be shown.
- M) Photographs of different people should be the same size and have the same characteristics. Each should only be presented to the recognizer for the same amount of time.
- N) Immediately after the presentation, the recognizer (often the eyewitness) should be given the opportunity to explain what he or she has to say about the identification in his or her own words.
- O) There is no place for recognition of any percentage, especially in the evaluation of an attempt at recognition. There can be no question of identification even if the recognizer indicates a percentage of similarity.
- P) Especially if the selection is based on (partly) functional characteristics (e.g. walking, running, speech, sound), it is advisable to use more modern technical devices than photography (e.g. video, digital camera, electronic data recorder).
- Q) When recognizing a corpse, it must be recorded separately if it is not the body or face that the active subject has recognized, but, for example, his or her clothing or jewellery. In this case, we cannot speak for sure of (dead) personal identification.
- R) Consider whether the questioner should be asked repeatedly at the negotiation stage whether he or she recognizes the person he or she has previously seen selected. Reproduction of a reproduction may not really have probative value.
- S) It is not only a witness (victim) protection reason, but also a forensic (investigative interest) reason why passive subjects (to be recognized) do not see the active subject, the recognizer (e.g. witness, victim, suspect).

9. Closing thought

We can hope that the improvement proposals put forward by legal theory and scientific publications will have a significant impact on legislation and the application of law in the future. If not in the coming months, but over several years, we can achieve that the identity attempt, which appears as a very “dangerous” Achilles heel of criminal proceedings, will indeed be in its rightful place, both in law and enforcement, and will not give rise to erroneous court decision, to justizmord.