

ABSTRACT

DISSERTATION

Human Line-up in Criminal Proceedings

The thesis deals in detail with the human line-up in criminal proceedings, which is not only a traditional method of practical activity of police investigators, but with effect from 1st January 2002 also a separate criminal procedural step regulated in § 104b of the Penal Procedure Code as one of the special means of the taking of evidence. At the same time, it is necessary to reflect the fact that the quintessence of line-up is a psychological process of reconnaissance based on a comparison of a previously perceived person (retroactively equipped from a memory trace in the form of an idea/image) with currently perceived persons. The purpose of this procedure is primarily individual identification. The whole act, in which the rights and interests of individuals are logically in conflict, also reflects a large number of variables both on the part of the system of criminal justice (*system variables*) and on the side of circumstances of the criminally relevant event and of the persons themselves (*estimator variables*). Many of the variables cannot be objectively assessed. In addition, foreign retrospective reviews of cases clearly show a significant error of eyewitness testimony, which implies a high risk of convicting innocent persons if they fall into the search of law enforcement authorities as potential perpetrators.

For all of the above, we define human line-up as a psychological practical activity of investigators based on psychological essence and legally formed for evidentiary purposes of criminal proceedings, characterized by a number of (sometimes conflicting) criminal, gnoseological, criminalistical, psychological, constitutional and sometimes biological aspects. This makes from human line-up very complicated, fragile and complex procedure that places high demands on law enforcement authorities.

The dissertation strives for a comprehensive critical analysis of the recognition process from all the above perspectives. The author's intention is to (at least partly) follow up on the valuable work of Miroslav Protivínský from 1971 named *Rekognice osob v trestním řízení*. The main goal of the author is to answer the question of whether line-up, despite its proven error rate, should still be one of the special ways of the taking of evidence regulated by the Criminal Procedure Code, and if so, in what specific form. When finding shortcomings in the legal definition or application practice, the author's goal immediately follows to come up with specific proposals *de lege ferenda*.

The submitted thesis consists of an introduction, eleven content chapters conceiving human line-up from different angles of view and conclusion. The first three chapters contain a discussion on the historical development of reconnaissance procedures through the prism of criminal law and criminalistics, a description of human line-up *de lege lata* and a possible classifications of this procedure with a description of possible types. The dissertation also deals

with photographic and vocal line-ups, including their controversial aspects, or with the specific human line-up of a corpse and the line-up of a living persons to find out their true identity. The most extensive chapter four analyses in detail not only the traditional and newly defined criminal-tactical principles of preparation and implementation of line-up, but also psychological aspects of this procedure. The issue of the influence of misinformation, the issue of the bystander effect or the issue of the verbal overshadowing is also mentioned as well as important issues of possible suggestibility of the act. The next two chapters focus on a long list of controversial issues in the light of court case law, such as the obligation and extent of the accused to be subjected to line-up, the necessary and desirable similarities between figurants or the extensive issues of non-postponement and non-repeatability. In the seventh and eighth chapter, attention is focused on the documentation, verification and evaluation of the results of line-up, on the defects of this procedure and their procedural consequences, but also on the national (domestic) comparison of line-up with interrogation and other special methods of the taking of evidence. Chapter nine is important with an analysis of individual types of recognition, where a foreign research-based explanation of the differences and determined accuracy of simultaneous, sequential, elimination, wildcard recognition, grain size recognition and forced choice recognition is given. The tenth chapter makes an international comparison with England, Wales, but also with Italy and the United States. Another very important chapter is chapter eleven. Here, three important questions are answered, namely: 1) whether it is really appropriate to continue to prefer *in natura* line-up over photographic one, 2) whether blank line-up is an appropriate safeguard against eyewitness errors, and 3) whether it is desirable with reference to foreign experiences to proceed with the implementation of line-up in the double-blind way. In the second part of the eleventh chapter, a point summary of almost thirty *de lege ferenda* proposals and a critical evaluation of the proposed wording of the planned recodification of the criminal procedural law (from the point of view of human line-up) is approached. At the end of the thesis, in addition to the obligatory evaluation of the set goals, it is also possible to find a vision of how the line-up in today's digital age should or could be administered with the help of specialized computer software.

From the author's point of view, there is no doubt that human line-up, which often provides key evidence for guilt decisions and at the same time implies a considerable risk of miscarriage of justice, necessarily needs an up-to-date elaboration reflecting psychological and constitutional aspects and foreign research findings. At the same time, only assessing that looks at the issue comprehensively can bring the desired and meaningful proposals beneficial for legislative changes and subsequent practice. The author does not avoid answering a long series of controversial questions in the text, in an effort to stimulate further discussion, which would contribute to higher accuracy and reliability of human line-up in criminal proceedings.

In Prague, on 25th June 2021,

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