

# The Rule of Law Messages of the Anglo-Saxon Identification Procedures

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## Abstract

*Both international and Hungarian empirical research strongly highlights identity parades (lineups) as the most common and most serious source of error in the measures of inquiry of justice-seeking criminal proceedings. Due to the importance of this dual-grained institution of criminal procedure and forensics, it can even have the consequences of a 'justizmord' (miscarriage of justice), therefore, it is important for the whole justice system to have a correct legal regulation and a fair and professional implementation.*

*Recognizing this fact, the author provides an overview of Anglo-Saxon countries regulatory models. On this basis, the author lists the most common criminal procedural and forensic causes of error. He presents recommendations for law enforcement officers and judges on criminal tactics and evidence assessment that can be used to prevent and avoid them and formulates his 'de lege ferenda' recommendations for the Hungarian legislator concerning legislative change.*

**Keywords:** *criminalistics, criminal tactics, criminal procedure law, identity parade, lineup method, miscarriage of justice, show-up, wrongful sentence*

## I. Introduction

The criminal justice system of each country strives to avoid the worst possible outcome – wrongful convictions – in other words injustice (*justizmord*). Regrettably, criminal justice systems do not always succeed in this regard. To support this statement, some examples from Hungary may be mentioned.

In 1957, in a Hungarian town called Martfű, a sexually motivated homicide was committed, for which a so-called János K. was sentenced to death, which as an act of grace was converted to a life sentence. After serving 11 years of his punishment, it was proven that the crime was in fact committed by Péter K., called to account in the new proceedings, who was subsequently sentenced to death and was executed in 1968.

Also, in 1984, János M., a resident of Szolnok County, was charged by the prosecution with a young girl' murder. By a legally non-binding decision he was sentenced to death, however, in 1986, he was acquitted of all charges in a prolonged criminal procedure, which took place in front of several courts.

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Dénes P., a resident of Heves County, Hungary, was sentenced to 6 years in prison in 1995 for violence causing death and attempted robbery. He spent 26 months in arrest and confinement when it turned out that the crime against the victim, an old lady, was committed by another person, who was subsequently held liable.

Ede K. was non – appealable sentenced to life imprisonment for the robbery of a bank in the city of Mór, Hungary on the 9th of May 2002, in which 8 people were murdered. Several years later, in 2007, it turned out that the crime was committed by two other people.

These examples were highlighted in the introduction to make it clear that the previously mentioned phenomenon still exists these days and is a real threat in Hungary as well. For this reason, it is of immense importance to work out preventive measures and to bring to light the cause of these, frequently fatal, derailments.

Research (and actual cases as well) in the world and in Hungary as well have brought to light the accentuated importance of lineup procedures with regards to *justizmord*. This is the reason why I believe it is important to examine the lineup methodology introduced by the Anglo-Saxon countries in their modern criminalistics toolset, in light of the recommendations on its implementation. Based on these, at the end of this article, I showcase the potential opportunities for improvement from a legal and criminalistics perspective, the lessons learned from the models and the conclusions, which serve an efficient and fair procedure.

## II. The United States of America (USA)

The USA was not placed at the beginning of the present essay by accident: the study on wrongful convictions and the results of the innocent project show that the lineup method is at the top of the list of causes leading to *justizmord* (*miscarriage of justice*).

I will highlight three studies of the many, which all reach similar conclusions<sup>1</sup>.

As a result of the first research, the following were mentioned as direct causes:

- a) false line ups, as the most frequent cases;<sup>2</sup>
- b) mistake made by police during investigation, (for example: identity checking, inspection errors, influencing, contamination of material residue, cross-/carry-/over- contamination;
- c) infringement of the law by the police and the investigation;
- d) errors of the prosecution (for example: failure to exclude evidence);
- e) expert opinion errors (unfounded, professionally mistaken);
- f) erroneous testimonies and reports of other offenders, prison agents, informers;
- g) mistaken, weak defense counsel activity;
- h) false confession;
- i) false circumstantial evidence.

<sup>1</sup> A. Badó, J. Bóka, *Ártatlanul halálra ítélték [Death penalties – innocently]* Nyitott könyv, Budapest, 2003; P. Hack, *Az igazságszolgáltatás kudarcai. [Failures of criminal justice]* in Fenyvesi C. (ed.), *A Magyar Büntetőjogi Társaság Jubileumi Tanulmánykötete*. MBT, Budapest-Debrecen-Pécs, 2011, p. 43.

<sup>2</sup> L. Spinney, *Line-ups on trial*, in *Nature*, 2008, no. 453, 7179, pp. 442-444.; J. Collins, J. Jarvis, *The Wrongful Conviction of Forensic Science. Crime Lab Report*, 2008, [http://www.crimelabreport.com/library/pdf/wrongful\\_conviction.pdf](http://www.crimelabreport.com/library/pdf/wrongful_conviction.pdf), accessed on 27 July 2021.

The second study processed 205 specific cases, with the following causes of error:<sup>3</sup>

a) misidentification by a witness	52,3 %
b) false testimony	11 %
c) negligence of officials	9,9 %
d) forced confession	8,4 %
e) „framing“	4,2 %
f) false testimony by an official-police	2,6 %
g) expert error	1,6 %

Lastly, the third study reviewed 86 cases and named the following causative factors of miscarriages of justice:<sup>4</sup>

a) misidentification by a witness	71 %
b) errors in forensic science tests	63 %
c) police errors	44 %
d) prosecution errors	28 %
e) false/erroneous expert opinions	27 %
f) dishonest informers	19 %
g) incompetent defense counsels	19 %
h) false witness testimony	17 %
i) false confession	17 %.

In light of the above mentioned three studies and the research behind them it is clear that my choice of topic is not a coincidence. I have been consciously researching the rules and methodology of identification for a decade, because it is obvious that there is often an insidiously hidden misidentification behind the most serious legal errors and wrongful convictions. This has been noticed by the Innocence Project staff and some theoretical researchers, thus legal, criminological and psychological recommendations have been (and are being) formulated at the federal level, which have been adopted by most of the states, or they are in the process of being adopted (as rules, regulations). I will highlight a few noteworthy recommendations in the following:

- a) use of blank tests;
- b) allowing members of the lineup to introduce themselves;
- c) use of video and audio recording techniques in both pre-trial interrogations and identification activities;
- d) forensic training of investigators, prosecutors, judges;
- e) the selection of lineup should be done with great care in a "fair" way, meaning that there should be not fundamental difference between the (potential) suspect and the members (gender, race, hair, clothing, physique, facial hair);
- f) the legal representative (counsel) of the (potential) suspect preferably should also be present at the lineup;
- g) not only simultaneous (in which people and objects are present at the same time), but also sequential, in other words, a one-by-one presentation is also allowed;
- h) a "blank" wall of people (culprit-absent lineup), who are above all suspicion, can be applied to test the credibility of the witness;
- i) a blind lineup is used to prevent official bias, in which the person who conducts the lineup is unfamiliar with the case, of which fact the recognizer must also be informed;

<sup>3</sup> C.R. Huff, A. Rattner, E. Sagarin, *Convicted But Innocent. Wrongful Conviction and Public Policy*, Sage Publications, Thousand Oaks, 1966, p. 62.

<sup>4</sup> M.J. Saks, J.J. Koehler, *The Coming Paradigm Shift in Forensic Identification Science in Science*, 309/2005, p. 892.

- j) a recommendation issued by a working group of the Department of Justice (DJTWG) recommends a lineup of minimum of five people in case the people are actually present at the lineup;<sup>5</sup>
- k) authorities shall follow the “one line – one suspect” principle, i.e. only one potential suspect can be in the line;
- l) it must be communicated to the recognizer that the perpetrator may not even be present in the line and will not be given feedback on whether his/her choice was “correct” – if he/she makes a choice at all;
- m) it must also be communicated to him/her that the investigation will continue even if he/she does not choose anyone, thus he/she does not have to choose anyone;
- n) in case of photographic identification, the recognizer should also be told that the perpetrator's appearance (hair color, length, shape, facial hair, skin) may have changed over time and may look slightly different on the photographs;
- o) the size of the presented photographs should be the same and the order in which they are presented should be random (and preferably the suspect's photograph should not be the first one presented to the recognizer);
- p) especially in the case of child witnesses, the *show-up* method is allowed, in which case they are shown the quickly produced potential suspect at the scene of the crime or at the police station – without involving other people like in a lineup;
- q) in court proceedings it is practical to apply a two-step test to check the reliability of the identification: firstly, to check whether the identification carried out can be taken into account as evidence and, secondly, whether the enforced method could have led to a misidentification.

## II. United Kingdom (UK)

The UK is the second Anglo-Saxon country to be presented, as, according to my research, the Scotland Yard's inspectors were the first to use the procedure of identification as a modern forensic method. At the end of the 19th century, it was considered that putting a (potential) suspect in a line-up among eight people of similar appearance, age and size to each other, but who were innocent according to the best knowledge of the authorities, and then asking the witness to choose the perpetrator, was much more probative in the eyes of the judge than just putting the suspect in front of the witness and asking him/her whether he/she recognized the suspect or not. The method was also adequate for assessing the credibility of the witness, because, if the recognizer chose a person who was above suspicion, he/she would lose credibility and question the rest of his/her testimony, since his/her memory was not reliable.

The American term *lineup* here (in England, Wales, Northern Ireland) is known and used as *identity parade* (occasionally *identification parade*).

The Police and Criminal Evidence Act of 1984 (PACE) and, within it, the Code of Practice for the Identification of Persons by Police Officers (Code D) set out

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<sup>5</sup> G.L. Wells, R. Lindsay, *Improving Eyewitness identifications from lineups: Simultaneous versus sequential lineup presentation*, in *Journal of Applied Psychology*, vol. 70 (3), 1985, pp. 556-564.

requirements to guarantee a due process. I will present a series of the ones that could be instructive:

- a) Identification requires an eyewitness who claims that he/she can identify the perpetrator and there are no disqualifying circumstances.
- b) The description given by the witness or victim must be given to the suspect's legal representative before the hearing.
- c) When the suspect arrives at the scene of the line-up, he/she should be asked whether he/she objects to the process or if he/she is willing to cooperate. At this point, he/she can acquire the advice of his/her legal representative (defense lawyer) and can consider it. If he/she objects – with just cause – steps should be taken to ensure that these reasons cease to exist. If they cannot be removed, the grounds for the objection must be recorded.
- d) It is obligatory to give the suspect the opportunity to consult with a lawyer or an acquaintance.
- e) Immediately before the presentation, the suspect should be informed of the procedure.
- f) The identification line-up (the "parade") can take place in a simple room or in a room with one side of the room equipped with tinted glass.
- g) All unauthorized people must leave and only those involved may remain.
- h) At the line-up, in addition to the suspect, eight other people (of similar height, appearance and facial hair) must be presented and as a rule, one suspect can be in the line at a time.
- i) The exception to this rule is when two suspects have a very similar appearance, in which case, 12 other people must be presented and both may participate in the line at the same time.
- j) More than two suspects should never be in the same line.
- k) If the suspect has any distinguishing marks (e.g. tattoos, scars on the face) the police may take steps to cover them up for the duration of the presentation.
- l) If several suspects, who form a group, are to be identified by the police a separate "identification parade" should be held for each person, except in the case of particular similarity referred to in point (h), in which case two people may be present in one presentation.
- m) The suspect may choose his/her place in the line, still cannot otherwise interfere with the process.
- n) If more than one witness or victim identifies, the members of the line may change places before each new recognizer enters.
- o) One witness/victim at a time may be called to the identification room, who has to be warned that the perpetrator may not be in the line and that if he/she cannot identify any person, he/she must also make this clear.
- p) Before deciding, each person in the line must be looked at carefully by the witness at least twice. When the executing officer has made sure that the witness has fulfilled this obligation, he/she must ask the question: *"Can you identify anyone?"*
- q) The identifier may ask the person in line to speak (repeat phrases the victim heard at the scene), assume specific poses, or make specific gestures. In such cases, the recognizer should be reminded that the identification is primarily for the purpose of identification by appearance. Only then should the person in line be asked to comply with the request.

- r) The witness may also ask to see the location of the above-mentioned marks (tattoos, scars). In this case, the covered tattoo must be made visible, the hat must be removed etc., so these marks must be revealed to the witness.
- s) Once the identification has been completed, the suspect and the legal representative must be informed of it, and if the witness requests it, he/she may observe the person a second time to confirm the identification.
- t) Prior to the identification, it must be ensured that, in the case of multiple witnesses, the identifiers cannot talk to each other about the people lined up, and preferably about anything at all. They must not even see the people in the line before the parade, nor speak to them, before or after. None of them should make any comments about any of the participants. No pictures, video or other means should be used by the authorities to influence the identifying person.
- u) The person conducting the proceedings may not interfere with the identification of a witness or victim, nor may he/she say anything about the choice or identification of a previous witness.
- v) If anyone is asked to leave during the procedure, it must be recorded. A list of the names of the participants should also be made. If a convicted person is involved in the proceedings, this special circumstance should also be recorded.
- w) If the person presented is in a penitentiary institution and there is no other reason to exclude him/her, he/she may leave this institution for the duration of the proceedings.
- x) If the identification is carried out in the penitentiary institution, other convicts may also take part in the line-up. In this case, everyone can wear the standard uniform clothing normally worn in penitentiary institution or if there is no danger, then civilians can be used, in which case the suspect must also wear normal civilian clothing.
- y) One witness can take part in a photo identification at a time to whom the authorities are obliged to show 12 photos.
- z) Again, the victim or witness should be made aware that the perpetrator may not be in any of the pictures.
- w) If the witness clearly selects a person from the pictures, claims that that person is the perpetrator and there are no other circumstances to suggest that the selected person can be excluded as a suspect, there is no need to call more witnesses at this stage of the procedure.
- x) This can be followed by video or face-to-face identification but only if the identity of the offender is not fully established.
- y) After the presentation, all further acts must be carried out in the presence of the suspect and his/her legal representative or guardian.
- z) When all the witnesses have left, the suspect must be asked: *"Do you have anything to add to what happened?"*.

In the field of judicial evaluation, I emphasize one guiding principle: the so-called "Turnbull Guidelines", which draws the attention to the fact that often a witness can misidentify a suspect. It is also easy for several witnesses to be mistaken at the same time, so if the prosecution's case is based entirely on identification, the judge should caution the jury to ask themselves questions accordingly, such as: *"How long did the witness watch the suspect?"*, *"From what distance?"*, *"In what light?"*, to help ensure clarity at trial. The judge will also give a precise definition and interpretation of the details, which, in such case, must be carefully considered by the jury.

### III. Canada

From Canada, which also has a *common law* legal system based on precedents, I also explored lineup recommendations that are worth considering:<sup>6</sup>

- a) The detective who is present with the identifier does not need to know anything about the case and should not know whether the suspect is among the people in the line.
- b) The investigator must also tell the witness that he/she does not know whether the suspect was in the line and if he/she is in fact in the line, which one he/she was.
- c) Everything that happens in the witness room should be audio-recorded, but it recommended to be video-recorded (the identifier should not be influenced in any way).
- d) All information declared by the recognizer during the identification must be recorded and then signed by him/her.
- e) Before and after the identification, the witness should be received and escorted out of the police station so that he/she cannot be influenced by anyone, especially by the investigators involved in the case.
- f) The appearance (external physique, clothing, facial hair) of the people gathered for the line-up should correspond as closely as possible (at least should be strongly similar) to the description that the witnesses saw at the time of the event.
- g) At the end of the lineup process, once a person has been identified, the witness should be asked if he/she is sure that the correct person has been identified. Both the question and the answer should be recorded word-for-word and then signed by the witness.
- h) At least 10 people must be assembled for the presentation. The larger the number of people collected, the lower the risk of misidentification.
- i) At least the portraits of 10 people must be included for photographic identification.
- j) The appearance of the people photographed should match the description of the witnesses as closely as possible. If this is not possible, they should resemble the suspect as closely as possible.
- k) Everything should be video, or audio recorded from the moment the executive investigator meets the witness until the end of the process.
- l) The identification must be done by a detective who does not know who the suspect is and is not involved in the investigation.
- m) In case of a photographic identification, the conductor of the process must tell the identifier that he/she does not know who the suspect is, and whether the suspect's photograph is included in the series of photographs or not.
- n) Before showing the images to the recognizer, the investigator should inform him/her that it is as important to exonerate an innocent person as to identify the suspect.
- o) The photos must be shown to each witness separately (one after another and not at the same time).

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<sup>6</sup> See more details: *Benefits of Best Practice Recommendations*, Canada, 2002, <https://www.justice.gc.ca/fra/pr-rp/jp-cj/rc-ccr/pej-pmj/p5.html> [accessed on 21 February 2022].

- p) In addition to the audio and video recordings, a form should be filled in about the event, findings, statements, observations, and signed by the witness and the person performing the execution.
- q) Police officers should not talk to witnesses about their identification after the presentation. (To avoid any possible doubt or fear.) Under no circumstances should the conductor of the investigation (or any other investigator) tell the witness that he/she was mistaken.
- r) Because of the importance of evidence provided by eyewitnesses and the risk of evidence being tampered with, there is also a proposal that police other than those investigating the crime should interview witnesses and conduct the identification procedure.

#### IV. Suggestions and Recommendations

Before I state the conclusions and my suggestions for improvement arising from the above, I would like to remind the reader of the essential rules of identification of the *Hungarian Act of Criminal Procedure (2017 XC)* (hereinafter referred to as *the Act*). These are specifically:

##### § 210

- (1) *The court, the prosecution or the investigating authority shall order and hold a presentation for identification if it is necessary for the purpose of identifying a person or an object. The accused or a witness shall be presented with at least three persons or objects for identification. The accused person or witness may, if no other means are available, be presented with a visual, audio or visual and audio recording of the person or object for identification.*
- (2) *Before the presentation for identification, the person from whom the identification is expected shall be questioned in detail about the circumstances in which he or she observed the person or object in question, his or her relationship to it, and any characteristics he or she knows about.*
- (3) *When people are presented, people who are independent of the case and not known to the person conducting the identification and who share the same characteristics as the person in question in the main features indicated by the person making the identification, in particular the same sex, age, body type, color, grooming and clothing, shall be grouped together with the person in question. Where objects are presented, the object in question shall be placed among similar objects. The position of the person or object in question within the group must not be significantly different from the others and must not be conspicuous.*
- (4) *The presentation shall be made separately, in the absence of each other, in cases where several people are identifying.*
- (5) *If the protection of the witness so requires, the presentation for identification shall be carried out in such a way that the witness cannot be recognized or perceived by the person presented for identification. If the personal data of the witness are ordered to be kept confidential, this shall also be ensured.*

##### § 213

- (1) *The rules of inspection shall be applied mutatis mutandis to the attempt to take evidence and to the presentation for identification.*



- (2) *The court and the public prosecutor's office may also have recourse to the investigating authority for the conduct of the inspection, the attempt to take evidence or the presentation for identification.*
- (3) *The accused, the witness, the victim and any other person, in particular any person in possession or possession of the object of the search, shall submit to the search, the attempt to produce evidence and the presentation for identification, and shall make the object in his/her possession available for the purpose of the search, the attempt to produce evidence or the presentation for identification. The accused may be compelled to comply with these obligations, the victim, the witness and other persons may be compelled to comply with them, or may be fined.*
- (4) *A video and audio recording shall be made of the inspection, the attempt to take evidence and the presentation for identification, if possible.*

A) Despite the fact that we've read the most detailed (Act of Criminal Procedure) statutory regulation so far on the specifically named identification, it does not say that it should be necessary to keep the identification in the original perceptual circumstances.

B) Also, as a *de lege ferenda* proposal, I would suggest that it would also be useful to stipulate in the law that the person who makes the identification must raise the attention (inform) of the recognizer on the following aspects:

- a) it is not certain that the perpetrator is among the people to be recognized;
- b) he/she is not obliged to choose (to choose at all costs);
- c) the investigation proceeds even if no one is selected;
- d) he/she will not get feedback on whether he/she made the "right" choice – if such a choice is made at all;
- e) the warnings indicated at point (a) to (e) should also apply to the identification of objects or photographs, and that the offender's appearance (the color, length, shape of his/her hair, facial hair, skin) may change over time or look slightly different in the photographs.

C) It is my understanding that both the words "to identify" and "presentation" (individually and together) encourage the recognizer, most often the crime victim or witness, who is often willing to comply with the authorities, to choose among the people (objects, sounds etc.) presented, to make sure he/she chooses or to make sure he/she recognizes anyone. And the compulsion to comply may have the erroneous consequence of the recognizer choosing when he/she is not sure, when he/she only perceives a similarity, or simply concludes from external signs that he/she thinks that he/she recognizes the real perpetrator. However, his/her mistake can lead to justizmord, since it is difficult to disprove this selection in theory and almost impossible in practice if the identified person has no alibi. It would therefore be more appropriate to speak of an "attempt at identification", that is, an attempt to identify rather than a presentation.

D) In the field of criminal tactics, it would be worth considering the so-called ecological detection method, which is a novelty. In essence, it differs from the traditional procedure according to which the witness is led – more or less randomly – alongside the suspect, who is in a natural environment. In this case, the potential suspect is asked to be in a place where several other people are also present, e.g. in a shop, on a busy street. The witness is accompanied with the intention to try to identify the suspect and pick out the perpetrator he/she saw earlier. The fact that the people to be compared are not purposively selected is usually compensated for by the large number and diversity of people present. However, it is also possible that passers-by

are "enriched" by the authority with people fitted for comparison. The advantage of this method is that it is more relaxed than the classical presentation for identification, minimizing the risk of the target person standing out from the group because of his/her inner tension or the unwitting attention of the persons assigned to the comparison<sup>7</sup>.

E) I also propose as a criminal tactical, influence-preventing – Anglo-Saxon-style solution – a method that can be implemented in practice. This involves the use of so-called "blind" conductors who have not been involved in the case before, rather than forensic investigators who are familiar with the case. These are law enforcement officers (police, customs investigators, prosecutors) who do not know the identity of the (potential) suspect in the case, i.e. they do not even know in their subconscious who the identification is aimed at. The line-up itself is put together by forensic experts familiar with the suspect and the case. But their role stops here for the time being, they leave the process. It is taken over by an employee who is not involved in the case and who must also communicate this fact to the recognizer. I mean, he/she is just conducting the identification and he/she does not know the case and he/she does not know the participants. Afterwards, he/she conducts the identification in a measured, distanced, uninfluenced way, because he/she does not know, does not even suspect who-what-why he/she should focus his/her influence on– the identification experiment is organized and recorded according to the tactical-technical recommendations. He/she will then hand over the report of the "result" to the forensic experts. With no history, it is not difficult for the "bystander" to comply with the recommendation not to reveal anything to the recognizers, neither confirmation nor denial, either verbally or by gesture or any kind of metacommunication. And he/she cannot do so after the identification, just as investigators who know the case cannot do so.

F) The conductor of the investigation should aim to minimize communication during the presentation. Instructions should be brief, clear and precise.

G) It is advisable to provide the (potential) suspect's legal representative (defense counsel) with a description of the witness or victim before the hearing. This gives him/her the opportunity to comment on the blatantly different, suggestive attitude and if necessary to complain.

G) It may be of tactical importance to accurately mention and correctly record how the recognizing witness expresses who among the several persons he/she recognized as the person he/she perceived in connection with the crime. Whether he points out, states it openly definitely, even repeatedly or on the contrary is vague and indefinite.

H) In agreement with Géza Katona's recommendation, in case of uncertain or doubtful identification of a person, repetition based on a different grouping of the same person is not appropriate, and the Anglo-Saxon "blank" figure is preferable. In this case, the (potential) suspect is not even included in the group (only individuals above suspicion), and the witness is then asked to identify him/her<sup>8</sup>.

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<sup>7</sup> See more: R.C.L. Lindsay, G.L. Wells, *Improving eyewitness identification from lineups: Simultaneous versus sequential lineup presentation* in *Journal for Applied Psychology*, 70 (3), 1985, pp. 556-564.; A.M. Levi, *Some Facts Lawyers Need To Know about the Police Lineup in Criminal Law Quarterly*, 46, 2002, pp. 176-183.; A. Schäfer, *Sequenzielle Video-Gegenüberstellungen*, in *Kriminalistik*, 12, 2001, pp. 797-798.

<sup>8</sup> G. Katona, *Valós vagy valótlan? Értékelés a büntetőperbeli bizonyításban [Real or false? Valuation in criminal procedure proofing]* KJK, Budapest, 1990, pp. 143-169.

I) An important criterion to be checked beforehand is that none of the people in the line should be an acquaintance of the person who is identifying (most often the victim).

J) Immediately after the presentation, the person making the identification (often the witness) should be given the opportunity to explain the identification in their own words.

K) There is no place for any percentage identification, especially when evaluating an attempt at identification. There can be no identification even if a percentage of similarity is indicated by the recognizer himself/herself.

L) Especially if the selection is based (in part) on functional characteristics (e.g. walking, running, speech, voice), it is advisable to use more modern technical tools than photography (e.g. video, digital camera).

## V. Conclusion

It is to be hoped that, under the rule of law, the proposals for improvement put forward by legal theory will have a meaningful influence and impact on the legislation and its implementation. Even if not immediately, but years later, we can achieve that the attempt to identify as an Achilles heel will be in place, both in law and practice, and will not give rise to erroneous court rulings (“legal death”) of misguided judgments, as the Anglo-Saxons have put it: miscarriages of justice.

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