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REVISITING SOCIETAL REACTION (LABELING) BY WAY OF QUANTUM HOLOGRAPHIC THEORY

Abstract: The labeling perspective, or sometimes referred to as the societal reaction perspective, very central in the 1960s and early 1970s, is revisited by providing a quantum holographic application. Although labeling theory was subject to much critique and eventually lost much of its appeal, discussions in theories of crime still make reference to the process-orientated nature of the approach and its importance. This article[1] revisits the core themes of societal reaction and suggests that situating the core themes within a quantum holographic approach revitalizes its importance as a component of more holistic-oriented theories of crime.

Key words: Labeling, societal reaction, deviance as an emergent event, quantum holography, Schema QD, phase conjugation, critical criminology, transformative justice.

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REVISITING SOCIETAL REACTION (LABELING) BY WAY OF QUANTUM HOLOGRAPHIC THEORY

REZIME

U ovom radu autor kritički razmatra teoriju etiketiranja, koja je u okviru pristupa socijalne reakcije na kriminalitet bila dominantna 60-ih i 70-ih godina prošlog veka, iz ugla kvantne holografije. Iako je teoriji etiketiranja upućeno bezbroj kritika, na nju se autori i dalje pozivaju u objašnjenju kriminaliteta. Autor pristupom kvantne holografije pokušava da ostvari novu konceptualizaciju ove ideje, specifikaciju, fizičku stranu procesa i da ponudi novi pristup u budućim istraživanjima. Tradicionalna nauka, ukorenjena u Njutnovoj ontologiji, nastavlja da se fokusira na objektivizaciju, tipologiju, pozitivizam, proporcionalne efekte i linearnost. Novi naučni pristup oličen u kvantnoj i holografskoj teoriji ukazuje na potrebu preispitivanja ovih paradigmi kao i uzimanja u obzir koncepata koji vrednuju proces, međupovezanost, postojanje, nesigurnost, osetljivost na početno stanje, nelinearnost, disproporcionalne efekte kao i mogućnost kreativnosti i transformacije.

Ključne reči: etiketiranje, socijalna reakcija, devijacija kao događaj u nastajanju, kvantna holografija, šema QD, faza konjugacije, kritička kriminologija, transformativna pravda.

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KRIMINALIZACIJA TORTURE KAO DEO OKVIRA O LJUDSKIM PRAVIMA

REZIME

Autor u radu polazi od činjenice da odgovornost za učinjenu torturu leži pre svega na državi koja je dužna da žrtvama ovog ponašanja obezbedi restituciju i rehabilitaciju. No, kada se radi o licima koja su izvršila torturu i na taj način povredila ljudska prava često se dešava da njihova odgovornost izostaje. Problem je u okviru o ljudskim pravima koji retko izričito predviđa krivičnu odgovornost pojedinaca za učinjenu torturu. Autor navodi „Osnovne principe i uputstva UN o pravu na pravni lek i obeštećenje žrtava u slučaju teških povreda međunarodnih ljudskih prava i u slučaju povreda međunarodnog humanitarnog prava" koji po autoru stavljaju na stranu krivičnopravni aspekt torture. S druge strane, Konvencija UN protiv torture, iako ima elemente ugovora o ljudskim pravima, suštinski predstavlja konvenciju za suzbijanje transnacionalnog organizovanog kriminaliteta. Autor smatra da je važno uočiti postojanje dve perspektive kada se radi o kriminalizaciji torture. Prva se zasniva na pristupu „ljudskih prava" i podrazumeva da se pojedinci odgovorni za torturu gone i adekvatno kazne. U ovom slučaju akcenat je na postupanju države koja je dužna da preduzme mere potrebne za otkrivanje i kažnjavanje torture. Druga perspektiva zasniva se na „suzbijanju kriminaliteta", a suštinsku razliku u odnosu na prvi pristup čini obaveza države, koja iz bilo kog razloga nije gonila i kaznila učinioce torture, da ta lica isporuči drugoj državi radi postizanja pomenutog cilja.

U radu se potom analizira definicija torture. Autor ukazuje da pristup „ljudskih prava" ne sadrži jasnu i preciznu definiciju torture, dok se s druge strane pristup „suzbijanja kriminaliteta" zasniva na uskoj definiciji uz insistiranje da učinilac može biti samo službeno lice. Pored navedenog, autor pominje i definiciju torture sadržanu u Konvenciji UN protiv torture koja između ostalog zahteva i postojanje određene namere, što nije slučaj sa pristupom o „ljudskim pravima". No, svaki od navedenih pristupa – nacionalni, međunarodni i pristup ljudskih prava – ima svojih prednosti i treba biti uzet u obzir kod razmatranja torture.

Autor takođe analizira pitanje dokaza u svetlu dve navedene perspektive. Po prvom pristupu o „ljudskim pravima“ korišćenje dokaza koji su pribavljeni vršenjem torture je u svakom slučaju zabranjeno, što, kako autor ističe, ne doprinosi otkrivanju i gonjenju učinilaca. Suprotno, pristup o „suzbijanju kriminaliteta“ dozvoljava korišćenje ovih dokaza, jer je primarni cilj otkrivanje krivičnih dela. U radu se posvećuje pažnja i pitanju imuniteta uzimanjem u obzir oba pristupa kao i prakse Evropskog suda za ljudska prava. Autor zaključuje da krivičnopravni aspekt jeste važan za suzbijanje torture i da svakako kao deo okvira o ljudskim pravima treba da ima značajnu ulogu. Ipak, u obzir treba uzeti svaki od navedenih pristupa, a ne treba zanemariti ni preventivne mehanizme.

Ključne reči: tortura, ljudska prava, krivično pravo, definicija, dokazi, imunitet.

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MERE BEZBEDNOSTI PSIHIJATRIJSKOG LEČENJA
– Prinudno psihijatrijsko lečenje kao krivična sankcija –

Apstrakt: U radu se razmatra veći broj pitanja od značaja za propisivanje i primenu mere bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdravstvenoj ustanovi i mere bezbednosti obaveznog psihijatrijskog lečenja na slobodi. Osim odredaba Krivičnog zakonika Srbije, u radu su analizirane i relevantne odredbe Zakonika o krivičnom postupku, Zakona o izvršenju krivičnih sankcija, kao i odredbe drugih zakona koje su od značaja za prinudno psihijatrijsko lečenje učinioca kriminalnog ponašanja. Posebnu pažnju privukla su dva koncepcijska pitanja. Prvo pitanje jeste da li je opravdano izostavljanje mera bezbednosti psihijatrijskog lečenja prema neuračunljivim učiniocima iz sistema krivičnih sankcija i problem rešavati prinudnim psihijatrijskim lečenjem koje ne bi imalo karakter krivične sankcije. Drugo pitanje se tiče izvršenja: da li odustati od specijalnih psihijatrijskih zatvorskih bolnica kao nosećih organizacionih jedinica na planu izvršenja? Razlozi koji bi išli u prilog potvrdnom odgovoru na ta pitanja, ipak nisu dovoljno ubedljivi. Ni iskustva u malobrojnim evropskim zemljama u kojima je došlo do opredeljivanja za drugačiju koncepciju ne ukazuju na prednosti takvog rešenja, odnosno ostaje tek da se vidi kakve će rezultate imati ukidanje sudskih psihijatrijskih bolnica i prelazak na novi sistem izvršenja (Italija).

Opšti zaključak rada jeste da u pogledu mera bezbednosti psihijatrijskog lečenja, i pored toga što je proteklo dosta vremena od uvođenja postojećih rešenja (KZ SFRJ iz 1976. godine) i što ona nisu suštinski menjana prilikom donošenja KZ Srbije 2005. godine, nema opravdanja da se na zakonodavnom planu preduzimaju neki koraci koji bi vodili koncepcijski drugačijim rešenjima. Umesto toga, postoji potreba da se poboljša i usavrši postojeće rešenje i otklone uočeni problemi kako na zakonodavnom planu, tako i u primeni. Ostajući u okvirima sadašnje koncepcije, postoji potreba za brojnim intervencijama u KZ, ZKP i ZIKS, kao i u pogledu unapređenja primene mera bezbednosti psihijatrijskog lečenja (izricanja i izvršenja) u skladu sa vladajućim shvatanjima u savremenom krivičnom pravu i psihijatriji.

Ključne reči: mere bezbednosti, obavezno psihijatrijsko lečenje i čuvanje u zdravstvenoj ustanovi, obavezno psihijatrijsko lečenje na slobodi, neuračunljivost, bitno smanjena uračunljivost.

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SECURITY MEASURES OF PSYCHIATRIC TREATMENT
(Compulsory psychiatric treatment as a criminal sanction)

SUMMARY

The paper addresses numerous issues of significance for prescribing and implementation of the security measure of compulsory psychiatric treatment and confinement in a medical institution and the measure of compulsory psychiatric treatment at liberty. Certain disputable issues arise with respect to implementation of such security measures, especially in case where the perpetrator of an unlawful act, provided under law as criminal offence, is mentally incompetent, calling for a closer examination in this paper. In addition to provisions of the Serbian Criminal Code (CC), subject to the analysis were relevant provisions of the Criminal Procedure Code CPC), Law on Execution of Criminal Sanctions as well as provisions of other laws applicable to involuntary psychiatric treatment ordered against perpetrators of criminal acts. The paper particularly focuses on two conceptual issues. The first is whether it would be justified to leave ordering security measures of psychiatric treatment against incompetent offenders out of the system of criminal sanctions and to resolve the problem by opting for an involuntary psychiatric treatment which would not have the nature of a criminal sanction. The second issue concerns implementation, more precisely, whether to shut down specialized prison psychiatric hospitals as the principal organizational units in charge of execution. The reasons in favor of an affirmative answer to the forgoing questions, however, are not convincing enough and neither are the experiences gathered in the few European countries opting for alternative concepts, as indicators of possible advantages of such solutions. Indeed, the true results of closing judicial psychiatric hospitals and turning towards an alternative, new implementation system (Italy, for inst.) are yet to be seen.

The general conclusion arrived at in the paper is that, as regards security measures of psychiatric treatment, despite the fact that the present solutions have been applicable for quite a long time (CC of the SFRY from 1976) without having undergone any essential reconstruction in the process of adoption of the Serbian CC in 2005, no legislative steps leading towards conceptually different solutions could be justifiably taken. Instead, there is a need for improving and perfecting the existing solution by removing the problems identified in legislation as well as in implementation. Short of overstepping the boundaries of the present concept, numerous interventions in CC, CPC and Law on Execution of Criminal Sanctions are still required as well as those in terms of modernizing the implementation of security measures of psychiatric treatment (ordering and execution thereof), to catch up with prevailing perceptions in contemporary criminal law and psychiatry.

Key words: security measures**,** compulsory psychiatric treatment and confinement in a mental institution, compulsory psychiatric treatment at liberty, mental incapacity, substantially impaired mental capacity.

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STANJE I TENDENCIJE KRIMINALITETA MALOLETNIKA U SRBIJI
– Analiza statističkih podataka

Apstrakt: U radovima iz oblasti krivičnih nauka, bilo da su njihovi autori početnici ili poznati istaživači, već na prvi pogled može se zapaziti ignorisanje dragocenih podataka o kriminalitetu koje sadrže pravosudne statistike. Ako se to u izvesnom smislu može razumeti kada se radi o tekstovima iz oblasti krivičnog prava (iako bi i oni bili sadržajniji kada bi npr. izlaganje o nekoj grupi krivičnih dela ili pojedinačnoj inkriminaciji bilo obogaćeno podacima koliko je takvih ponašanja zabeleženo poslednjih godina, ko su učinioci, koliko je trajao postupak i koje sankcije su izrečene tim licima) takva praksa je neprihvatljiva naročito kada se radi o kriminološkim delima. Ako ni zbog čega, ono stoga što se ne radi o sholastici već o nauci o realnim pojavama koja nikako ne može ignorisati numeričke podatke o kriminalitetu i njegovoj kontroli.

Objašnjenje navedene prakse krije se u neznanju – najveći broj onih koji sebe smatraju kriminolozima ne poseduju ni elementarne predstave ne samo o tome koji se sve podaci mogu naći u bazama podataka pravosudne statistike, nego oni ne mogu da protumače ni fakte koji su publikovani u opštim presecima – biltenima koji se redovno izdaju i poslednjih godina dostupni su svakom građaninu koji poseduje internet priključak. Sâmo neznanje nije najveći problem – postoji još jedan razlog koji još više kumuje navedenom stanju. To je odsustvo želje da se zađe u ovu materiju i pronikne u njenu problematiku. Takav zahvat ne može se izvesti u vidu „skraćenih kurseva" ili prelistavanjem informacija na Wikipediji. Ova duhovna komocija ili još bolje lenjost pokriva se raznim opravdanjima koja se kreću od načelnih opservacija da se radi o registrovanom a ne o stvarnom kriminalitetu – do tvrdnji da se u tim evidencijama mogu naći i greške, da u sudovima obrasce na osnovu kojih se sastavljaju evidencije popunjavaju pripravnici ili čak administrativno osoblje i tako dalje. Ovaj rad napisan je i zbog toga da bi se čitaocima ukazalo koliko i kakvih podataka mogu naći u pravosudnim evidencijama koje se odnose na kriminalitet maloletnika.

Ključne reči: maloletnici, kriminalitet, fenomenologija, prijavljena lica, osuđeni

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STATE AND TENDENCIES OF JUVENILE CRIME IN SERBIA

Analysis of statistical data

SUMMARY

Analysis of juvenile crime in this article is based on the data of reported and convicted juveniles. It can be concluded that the state of crime of this category of offenders is not dramatic, considering that it does not show a tendency of rapid growth (the only exception is the second largest city in the Republic – Novi Sad). The number of reported offenders ranges for more than a decade around 4000, which means that the percent of persons aged

14-18 years in the total number of reported perpetrators of all crimes is about 4% – in other words, their crime rate is about 55. Territorial distribution shows that more perpetrators are registered in the south than in the north part of the Republic.

However, some data of the structure of juvenile crimes and of their personal traits do not favor the mentioned calming conclusion. In the structure of crimes committed by persons aged 14-18 years for decades have dominated property crimes. However, participation of these crimes has declined in past years, while crimes against life and limb have recorded a notable increase, that has stabilized in recent years at around 10%. Rapid growth is visible at the offenses against public order and legal transactions, as well as at the criminal offenses against public health (related to drug abuse).

The process against juveniles from the time of bringing the criminal charges to the decision lasts on average less than four months, against every twentieth offender a measure of restriction of freedom (beside detention, measures of temporary accommodation are included) is imposed. Detention is usually imposed on offenders who committed crimes against property (qualified theft and robbery) and in 70% of all cases it lasts up to one month.

Based on the data from the judicial statistics it is possible to make some kind of photo-robot of an average juvenile offender. This is a man who is often between 16 and 18 years old (older juvenile), who commits crimes within a group and most often together with peers, usually has completed primary school and it is still involved in educational program, lives with parents and nationally identifies as a Serb. One sixth of all offenders are recidivists.

Victims of juvenile crimes in the most cases are men (women make up only about one quarter of victims), usually (just over half) adults, and mostly they are victimized by crimes against property; followed by victims-peers who are in the most cases victimized by criminal offences of violence.

Key words: juveniles, crime, phenomenology, reported offenders, convicts.

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SVAKODNEVNI ŽIVOT REZIDENATA SPECIJALNE ZATVORSKE BOLNICE U BEOGRADU

Apstrakt: U ovom tekstu se bavimo analizom priča rezidenata Specijalne zatvorske bolnice u Beogradu o njihovoj svakodnevici. Kroz segmente ovih priča nastojali smo rekonstruisati život u bolnici i *uhvatiti* značenja koja ovom iskustvu daju naši sagovornici-ispitanici kojima su izrečene mjere bezbjednosti obaveznog psihijatrijskog liječenja i čuvanja. Svakodnevicu popunjavaju sadržaji koji su formalno nametnuti/ponuđeni (radne obaveze, zaduženja, socio i psihoterapija), i aktivnosti koje pacijent može sam osmisliti (spavanje, druženje, na primjer). Prve prakse smo za potrebe ove analize nazvali formalnim, a druge neformalnim. Pokazalo se da su sadržaji ponuđeni kroz formalni sistem prihvatljivi tek jednom broju naših sagovonika, a dnevnu rutinu koju opisuju kao monotonu, dosadnu, jednoličnu, podnošljivijom čine aktivnosti praktikovane u okviru neformalnog sistema. Konačno, na osnovu opisa i značenja koja svakodnevici daju oni koji je žive identifikovali smo i kritična – problematična mjesta u svakodnevnim rutinama, kao i potrebu da se i u buduće preduzimaju slična istraživanja.

Ključne riječi: forenzički pacijenti, svakodnevni život, aktivnosti, strategije

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EVERYDAY LIFE OF SPECIAL PRISON HOSPITAL FORENSIC PATIENTS – SOCIOLOGICAL STUDY

SUMMARY

In this study, we have analyzed the Special Prison Hospital in Belgrade forensic patient´s narratives about everyday life. The primary objective of the analysis was to describe the daily routine and its meanings for patients. During the analysis two broad research objectives have emerged: to identify the key problems of everyday life of thise people, and mark the need for further investigation of this issue. Specifically, subject everyday life of psychiatric, and particulary, of special patients, insuffitiantly dealt with in the foreign and in home scientific literature.

Their everyday life is burdened by uniformity, formally offered amenities not acceptable to them and typical mechanisms and strategies for survival to overcome boredom. Institutional setting offers a rare pleasure: food, sleeping and socializing. Findings of our study confirm this portray. We have been observing typical day spending patterns of 50 forensic patients: getting up, going to breakfast, resorting to escape strategy – sleeping, going to lunch, escape strategy – sleeping and / or socializing, dinner, escape – socializing and / or sleeping. It turned out that formally offered contents – social and psychotherapy, and work assignments, are neither useful nor acceptable to them. Thay rarely participate in occupational therapy, more common in group therapy, a mandatory work assignments and paid tasks are performed solely by those – who must, since thay have no other income. The reason for non-acceptance of these practices are their inadequacy. For example, they believe that occupational therapy activities degrade them. Similary, the work assigments are imperatively imposed, execution is closely monitored. Everyday life in the institutional setting in the total hierarchically organized institution is colored with a range of deprivation. Their privacy, security and hope are deprived. Summed up, these findings reveal a number of critical points in the daily routines of forensic patients. They are: the inadequacy of formally offered activities for the adult population, and the mechanisms that may lead patients to be more active in informal sphere. Finally, we noted the need for further exploration of these issues which we have barely scratched the surface off.

Keywords: forensic patients, everydaily life, activities, strategies

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TAKSONOMIJE KONCEPATA BORBE PROTIV TERORIZMA

Apstrakt: U radu su izložene klasifikacije i tipologije politika, strategija, doktrina, pristupa ili modela suprotstavljanja terorizmu. Preko izlaganja taksonomija naznačeni su načini konceptualizacije i upućeno je na neke modalitete evaluacije koncepata kontraterorizma (KT koncepata). Potvrđena je metodološka opravdanost taksonomije i u istraživanju državnih modela protivmera i/ili strateških odgovora na terorizam, ali i metodološka postavka da – ma koliko pruža sistematičniju sliku o ovoj problemskoj oblasti – taksonomija ostaje metodološki instrument analitičkog opisivanja, i da se iz nje može izroditi teorija tek ukoliko se u istraživanju dođe do sistema stavova koji omogućavaju tumačanja uzročnih veza i naučno predviđanje.

Ključne reči: kontraterorizam, odvraćanje, borba protiv pobune, pomirenje

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TAXONOMY OF THE CONCEPT OF COUNTERTERRORISM

SUMMARY

This paper presents the classification and typology of policies, strategies, doctrines, approaches or models of combating terrorism. The paper indicates the ways of conceptualising by presenting taxonomies and refers to some modalities of evaluation of counterterrorism concepts (CT concepts). The methodological justification of taxonomy in research of the state model of countermeasures and/or strategic responses to terrorism is confirmed, as also is the methodological premise that – despite its ability to provide a more systematic picture of this problem area – taxonomy remains a methodological instrument of analytical description, and that a theory may originate in taxonomy only if the research reaches the system of propositions that allow the interpretation of causal relationships and scientific foresight.

Models of response to terrorism are often presented via dichotomies as 'on the level of certain states and group, at the level of various regional mechanisms for cooperation'; counterterrorism and antiterrorism; short-term and long-term response; reactive and proactive response. Contents and diverse aspects of dichotomies overlap when comparing elements that define soft and hard approach, the war model and the criminal justice model, a response that is marked as 'retaliatory action' and 'prevention actions', or 'conciliatory' and 'coercive' response. Featured dichotomies, however methodologically useful, lead to the conclusion that, when analyzing the modalities of combating terrorism, it is necessary to bear in mind the other (broader) criteria and indicators. This is the reason to develop a mixed or intermediate types of responses or design tripartite classification (which is not surprising because they often arise from a dichotomy in which members positively determined). Classifications reflect the theoretical perspective and approach to the analysis of a specific problem, and then might follow widely accepted models. Review of classifications of policies and counterterrorism strategies allows for consideration of basic premises, features and modalities of their implementation – according to priorities, areas, or considerations of ways of actions for the realisation of specific objectives – which confirms the methodological justification of classification also in this research field. Presenting classifications allows the comparison of counterterrorism concepts and provides elements for their evaluation – when the analysis includes all the elements necessary for evaluation of efficiency of operational model, and other (law, political and ethical) aspects (legality, legitimacy, morality). Insight into the current classifications and typologies (counterterrorism policies, strategies, doctrines, approaches or models) confirmed the well-known methodological premise that taxonomy – despite its ability to provide a more systematic picture of this problem area – by the theoretical scope, it remains a methodological instrument of the analytical description. A theory may originate in taxonomy only if following the naming and framing of a problem issue – and then dissecting and/or separating the aspects that need to be studied – research reaches the system of propositions that allow the interpretation of causal relationships and hence enable the forecasting for thoughtful relation toward the reality and adequate action. In this sense, classifications of the counterterrorism policies that are induced from systematic, empirical comparisons (like the one from EU counterterrorism study *Mapping Counterterrorism: A categorization of policies and the promise of empirically-based systematic comparisons*) are of special value.

Key words: *counterterrorism*, *deterrence, c*ounterinsurgency, conciliation

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Jovana Sretenov[*]

U KOJOJ MERI DNK MOŽE PRUŽITI ČVRST DOKAZ?

Apstrakt: U radu ćemo najpre opisati koncept analize DNK u svrhe rešavanja krivičnih slučajeva, i prve slučajeve u kojima je DNK korišćena kao forenzički dokaz. Potom ćemo ispitati savremena naučna i pravna pitanja koja se tiču upotrebe DNK u krivičnim postupcima, pri čemu ćemo predložiti načine koji mogu učiniti forenzičku analizu DNK još čvršćim dokazom na sudu. Takođe ćemo se ukratko osvrnuti na etička pitanja koja se tiču DNK dokaza i DNK baza podataka.

Ključne reči: DNK, forenzika, dokaz, individualizacija, forenzička identifikacija

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TO WHAT EXTENT CAN DNA PROVIDE ROBUST EVIDENCE?

SUMMARY

The author introduces the concept of DNA analysis for criminal casework starting with the definition of Forensic Science as an applied science which collects and analyses material traces found on crime scenes with the aim to determine the relationship between the trace and the crime incident, as well as to interpret and present the evidence in court. The paper explains how the field of science merges with the fields of law, policing and the wider political, social and economic context in which they all operate.

Forensic DNA analysis and its roots in classical genetics, biochemistry and molecular biology are addressed, including key current challenges concerning forensic DNA analysis for crime purposes, which aim to explain laboratory results in court to people who have very limited knowledge of forensics and its methods and techniques. The use of DNA analysis for criminal casework after its introduction in the late 1980s is explained, including analyses of the history and current scientific and legal issues concerning DNA analyses. The difficulties that expert witnesses encounter in courts due to different principles that exists in law and science in general are also highlighted.

The paper also addresses ethical issues regarding DNA evidence and DNA databases and finishes with a couple of recommendations that could facilitate more robust application of DNA analyses. The author advocates for the introduction of clear procedural and technical standards regarding admissibility of DNA evidence that must be legally set in order to produce robust court evidence, including efforts at the international level aimed at regulating the use of DNA analysis for forensic purposes among different countries.

Key words: DNA, forensic science, evidence, individualization, forensic identification