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A FEW REMARKS ON PROFESSIONAL AND EXPERT ACTIVITIES IN CRIMINAL PROCEEDINGS

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Matis Jakub. A few remarks on professional and expert activities in criminal proceedings.

In criminal proceedings, the establishment of facts beyond reasonable doubt is a cornerstone principle, ensuring that criminal offenses are accurately identified and perpetrators are justly punished while respecting the rights of all parties involved. The proof process is vital, with evidence playing an essential role in determining the outcomes of various procedural stages. Among the types of evidence, expert evidence has become increasingly significant, especially with advances in science and technology broadening the scope of issues requiring specialized knowledge.

This paper aims to analyze the roles and impacts of professional and expert activities in criminal procedures. It seeks to highlight the distinctions between expert reports and professional statements, illustrating their respective legal standings and importance in the context of Slovak law. By examining the regulatory framework, specifically Act No. 382/2004 Coll. on experts, interpreters, and translators, and the Criminal Procedure Code (Act No. 301/2005 Coll.), the paper delves into the conditions, rights, and obligations of experts. Additionally, it addresses the significance of expert consultants introduced by the Criminal Procedure Code, who provide advisory services without precluding the involvement of expert witnesses for comprehensive technical assessments. Expert reports, governed by stringent formalities, are pivotal in addressing complex technical issues within criminal cases. These reports must be produced by court-appointed experts and include detailed descriptions of the methods used and the conclusions drawn. Conversely, professional statements, considered documentary evidence, do not carry the same legal weight and lack the formalities required for expert reports. The Criminal Procedure Code also ensures that expert evidence is used appropriately by stipulating when and how expert opinions should be sought. This comprehensive approach ensures that all technical and scientific issues are thoroughly examined, contributing to the fair administration of justice. In conclusion, the integration of expert and professional activities in criminal proceedings enhances the accuracy and reliability of judicial decisions. By leveraging specialized knowledge, the legal system can better fulfill its mandate of delivering justice while upholding the principles of fairness and due process. This paper underscores the necessity of clear regulatory frameworks and the proper application of expert evidence to achieve these aims.

Key words: proving, professional and expert activities, expert report

Матіс Якуб. Кілька зауважень щодо професійної та експертної діяльності у кримінальному провадженні.

У кримінальному провадженні встановлення фактів поза розумним сумнівом є наріжним принципом, який гарантує, що кримінальні правопорушення будуть точно ідентифіковані, а винні будуть справедливо покарані з дотриманням прав усіх залучених сторін. Процес доказування є життєво важливим, а докази відіграють суттєву роль у визначенні результатів різних процесуальних етапів. Серед видів доказів все більшого значення набувають висновки експертів, особливо в умовах науково-технічного прогресу, який розширює коло питань, що потребують спеціальних знань.

Метою цієї статті є аналіз ролі та впливу професійної та експертної діяльності у кримінальному судочинстві. Вона прагне висвітлити відмінності між експертними висновками та професійними заявами, ілюструючи їхні відповідні правові позиції та значення в контексті словацького законодавства. Вивчаючи нормативно-правову базу, зокрема Закон № 382/2004 Зб. про експертів,

усних та письмових перекладачів, а також Кримінально-процесуальний кодекс (Закон № 301/2005 Зб.), у статті розглядаються умови, права та обов'язки експертів. Крім того, в ній розглядається значення експертів-консультантів, запроваджених Кримінально-процесуальним кодексом, які надають консультативні послуги, не заперечуючи при цьому залучення експертів-свідків для проведення комплексних технічних оцінок. Експертні висновки, які регулюються суворими формальностями, є ключовими у вирішенні складних технічних питань у кримінальних справах. Ці звіти повинні бути підготовлені призначеними судом експертами і включати детальний опис використаних методів і зроблених висновків. І навпаки, професійні заяви, які вважаються документальними доказами, не мають такої ж юридичної ваги і не відповідають формальностям, що вимагаються для експертних висновків. Кримінально-процесуальний кодекс також забезпечує належне використання експертних доказів, визначаючи, коли і як слід звертатися за висновками експертів. Такий комплексний підхід гарантує, що всі технічні та наукові питання будуть ретельно вивчені, що сприяє справедливому відправленню правосуддя. Таким чином, інтеграція експертної та професійної діяльності у кримінальному провадженні підвищує точність і надійність судових рішень. Використовуючи спеціалізовані знання, правова система може краще виконувати свій мандат щодо здійснення правосуддя, дотримуючись принципів справедливості та належної правової процедури. Цей документ підкреслює необхідність чіткої нормативно-правової бази та належного застосування експертних висновків для досягнення цих цілей.

Ключові слова: доказування, професійна та експертна діяльність, висновки експерта

Formulation of the problem.

Among the fundamental principles of evidence is the principle of establishing the facts beyond reasonable doubt. The role of law enforcement authorities and courts is to ensure that criminal offences are properly established and their perpetrators are justly punished in accordance with the law, while respecting the fundamental rights and freedoms of natural and legal persons.

It is not possible to ensure that the purpose of the criminal proceedings is fulfilled without the process of proof. Evidence is essential and indispensable in fulfilling the purpose of criminal proceedings. It is a key element which influences the various stages of the criminal proceedings and its results directly determine the final decision and the person who will make it [1].

When examining the issue of expert evidence, it is necessary to take into account the fact that, in the context of criminal proceedings, it is only one part of the evidence. Criminal proceedings are a procedure regulated by law for law enforcement authorities and courts, as well as for other persons involved in criminal proceedings. Its task is to establish beyond reasonable doubt whether an offence has been committed, to identify the perpetrator and to impose a penalty or protective measure in accordance with the law, to enforce the decision or ensure its enforcement, or to decide on the victim's claim for compensation for damages. It also seeks to strengthen the rule of law, prevent and avoid crime and educate citizens.

Based on the presented evidence, the court will determine whether the crime occurred and, if so, identify the individual(s) criminally responsible, specifying the nature and extent of their culpability. The significance of evidence lies in its ability to fulfill the objectives of judicial proceedings, as the outcome of evidentiary examination will establish the degree to which the truth has been ascertained in the given case.

In the interests of a fair decision in criminal proceedings, expert witnesses play an indispensable role in clarifying complex technical issues. Given the preference for "facultative ordering" of experts in the Slovak legal system, it is necessary to consider, as a first step, whether a less formal instrument in the form of an expert statement would be sufficient to answer the questions and address the expert tasks at hand [2].

Article objectives.

The aim of the article will be to analyze the role and importance of professional and expert activities in criminal proceedings. The article will focus on the precise definition of what is meant by the terms 'professional' and 'expert' activities in the context of criminal proceedings, and will also examine how professionals and experts contribute to the conduct of criminal proceedings, including their powers and responsibilities. Another key aspect will be the identification of the legislative framework governing the activities of experts and professionals in criminal proceedings, including the requirements for qualification and certification of experts. The article will also focus on the problems and challenges that

may arise in the use of professional and expert activities in criminal proceedings. The aim of the article is to provide the reader with a general perspective on the importance and functioning of professional and expert activities in criminal proceedings, thereby contributing to a better understanding of this important topic.

The current state of the issue. An expert report addresses scientific and technical issues in criminal proceedings, thus playing a key role in the process of proof. Expert evidence has come to the fore with the advent of advances in technology and science. These developments have widened the range of topics requiring special expertise, complicated social relations, and these changes have also been reflected in the justice system, thus modifying the structure of criminal proceedings [3].

The 2014 report of the European Commission for the Efficiency of Justice (CEPEJ) defines the activity of a forensic expert as follows: “the action of an expert by designation or approval of an authority/court which contributes in the process of rendering a decision, by supporting technical or factual evidence”. According to the research, an expert witness is a professional (doctor, architect, etc.) selected by the judge to carry out expert work. The document emphasizes the role of experts in assisting the court to advise on complex and special issues” [4].

According to the European Commission for the Efficiency of Justice in Europe, there are different types of expert witnesses who play different roles in different countries. Based on the nature of their tasks, they can be divided into three categories:

Technical experts: These experts assist the court in dealing with technical and scientific issues and are appointed by the court.

Expert Witnesses: These experts support the parties in criminal proceedings in proving and strengthening their arguments. They are required by the parties and their role is common in common law systems.

Legal experts: they are contacted by the court to clarify specific legal issues. They assist the court in the preparation of judicial materials but do not interfere in the decision-making process [5].

Expert activities in Slovakia.

Expert activities are regulated by Act No. 382/2004 Coll. on experts, interpreters and translators. This Act sets out in detail the conditions for the performance of expert activities, the rights and obligations of experts, as well as the rules for the operation of expert institutes. It also defines the competences of the Ministry of Justice of the Slovak Republic in the supervision and regulation of these activities [6].

Section 16 of the Act defines expert activity as a specialized professional activity carried out under the conditions laid down in the Act by experts for the client. The Act regulates the acts of expert activity, which are in particular expert opinion and its supplement, expert opinion or confirmation and explanation.

The issue of expert activity in criminal proceedings is also regulated by the Criminal Procedure Code, which lists it as a professional and expert activity.

Professional activity.

On 1 January 2005, the recodification of criminal law came into force in the Slovak Republic. From the point of view of the performance of expert activities in criminal proceedings, the decisive legal norm is the Criminal Procedure Code, Act No. 301/2005 Coll. The new Criminal Procedure Code partially changes the previous practice, where the expert opinion was the priority form of solving expert questions [7].

Since the recodification came into force, the priority is given to expert opinion and only in cases where this is not sufficient, expert opinion is required. The new Criminal Procedure Code also introduces the institution of an expert consultant for the court and law enforcement authorities [8].

Section 152 of the Code of Criminal Procedure introduces a new way of dealing with professional questions. Pursuant to Section 141(1) of the Criminal Procedure Code, if expert knowledge is necessary to clarify a fact important for criminal proceedings, the law enforcement authority and in the proceedings before the court, the president of the chamber shall request an expert opinion outside the expert activities carried out pursuant to a special law. In simple cases, even an expert statement is not necessary; a written certificate, the accuracy of which is not in doubt, shall suffice.

Article 141(3) of the Criminal Procedure Code states that the law enforcement authority (according to Article 10(1) of the Criminal Procedure Code, the public prosecutor and the police officer) and the court shall request an expert statement or written confirmation, in particular from an organization specialized in the activity which is the content of the expert statement or written confirmation. An expert statement or written confirmation may also be requested from a public authority pursuant to Section 141(5) of the CP, which shall always provide it without compensation.

The law enforcement authority or the court shall decide on requesting an expert statement or confirmation pursuant to section 141(2) of the TA by means of a measure. A measure, as defined in Article 10(18) of the CP, is an informal oral or written decision of a technical, organizational or operational nature. Due to the nature of the measure, it cannot be appealed [9].

Expert activity.

An expert report, prepared by a professionally trained expert as mandated, is a critical piece of evidence with irreplaceable value in legal proceedings. The term “expert report” refers to the specialized professional work conducted by an expert as defined under Act No. 382/2004 Coll. on Experts, Interpreters, and Translators, as amended. The preparation of an expert report adheres strictly to all relevant regulations and laws. The Ministry of Justice of the Slovak Republic maintains a list of certified experts, while the lists of expert evaluators and real estate experts are managed by the respective state authorities.

The law enforcement authority and the president of the chamber in the proceedings before the court shall bring in an expert to give an expert opinion only if the expert opinion is insufficient due to the complexity of the fact to be clarified. Where a particularly complex fact is to be clarified, two experts shall be admitted. The Code of Criminal Procedure makes it compulsory to bring in two experts whenever an examination of the state of mind and an autopsy of a corpse are involved (Article 142(1) of the Code of Criminal Procedure).

The investigation of criminal offences is therefore closely intertwined with the expertise of experts and expert witnesses working in various fields and branches of expert activity. The assessment of emerging uncertainties by specific experts facilitates the ascertainment of the objective truth about the act committed. At the same time, it serves the law enforcement authorities as a basis for making a decision or carrying out further legal actions [10].

The reasons and grounds for expert examination are regulated by Section 142(1) of the Code of Criminal Procedure. This provision stipulates that “if, due to the complexity of the fact to be clarified, the procedure according to Section 141 is not sufficient, the law enforcement authority and in the proceedings before the court shall bring in an expert to give an expert opinion.”

From this interpretation it is clear that the priority should be to examine the reality and possibility of clarifying the necessary facts according to the provision of Section 141(1) of the Code of Criminal Procedure. The provision of Section 141(1) stipulates that “if expert knowledge is necessary to clarify a fact important for the criminal proceedings, the law enforcement authority and in the proceedings before the court, the president of the chamber shall request an expert opinion outside the expert activity carried out pursuant to a special law.”

In the case of a particularly serious case requiring special knowledge, an expert examination shall be ordered in accordance with the provisions of Article 147 of the Code of Criminal Procedure, where it is stipulated that “in exceptional and particularly serious cases requiring a special scientific assessment or for the examination of an expert’s opinion, the law enforcement authority or the court may engage an expert institute to provide an expert opinion”.

The provision of Article 147(2) of the Code of Criminal Procedure states that if no expert institute is entered in the list, or if the institute entered therein is unable to give an expert opinion, another legal entity which is a specialized scientific workplace may be brought in to give an expert opinion.

Section 146 of the Code of Criminal Procedure regulates an important situation that may arise in the course of expert evidence: doubts about the correctness and objectivity of an expert’s report. If such doubts exist and cannot be eliminated even by the explanation of the expert, it is necessary to bring in a new expert to draw up a new expert report.

The purpose of this provision is to ensure the objectivity and reliability of expert evidence. If there are doubts about the work of the original expert, they must be verified and, if necessary, supplemented by a new expert opinion.

Doubts about the expert’s opinion may be raised by the parties to the proceedings (the accused, the prosecutor, the defense counsel, the injured party) or by the court on its own initiative.

The court shall examine the doubts raised and assess whether they are well-founded. This may be done, for example, by questioning the original expert, by confronting other experts, or by studying the relevant literature.

If the court concludes that the doubts about the expert’s report are well-founded, it will admit a new expert. He or she will draw up a new expert report which will become part of the evidence.

The court then evaluates both expert reports (the original and the new one) and takes them into account when deciding the case. Bringing in a new expert is an important tool to ensure a fair trial. This allows the accuracy and objectivity of the expert's conclusions to be verified and, if necessary, the evidence to be supplemented by a new expert opinion.

An expert is not to be confused with a witness, because a witness is irreplaceable and his perception of the facts through his own senses is unique. A witness testifies to facts relating to criminal activity of which he has acquired knowledge outside the context of the criminal proceedings. By contrast, an expert witness is substitutable, since he acquaints himself with the facts relating to the criminal offence during the criminal proceedings by studying the files, by being present in person during the conduct of the proceedings or by examining the subject-matter himself. In addition, the expert uses his specific expertise when answering questions [11].

According to the new regulation of Article 151 of the Code of Criminal Procedure, law enforcement authorities and the court may use the assistance of an expert consultant provided that the conditions set out in paragraph 1 are met. The expert consultant shall only provide advice and consultation on the case; his or her participation does not preclude the possibility of calling in an expert to assess technical issues and to provide an expert opinion. The expert consultant shall be admitted by measure and may not make any written statements or certificates.

From the point of view of the performance of expert activities, the provision of Section 151(2) of the Criminal Procedure Code is important, according to which one who has acted as a consultant cannot be an expert in the same case, nor can he or she submit a written statement [12].

Comparison.

Professional activity and expert activity differ in the final product and in their legal status within the process. Professional activity results in a professional statement or written confirmation, whereas expert activity results in an expert report.

The fundamental difference lies in the legal nature of these means of proof:

- A professional statement or written confirmation is considered documentary evidence. This means that it is evaluated like any other written document submitted in a trial. It does not have binding content or the formalities laid down by law. Nor does it contain a detailed description of the examination procedures that led to the conclusions.

- An expert report carries much stronger legal weight. It is drawn up exclusively by experts entered in the list of experts or by ad hoc experts appointed by the court (Article 142(1) of the Code of Criminal Procedure). The expert report must contain a detailed description of the methods and procedures used, as well as the reasons for the conclusions reached.

- The expert is appointed by the court by an order against which a complaint may be lodged.

- The preparer of the expert's statement or written confirmation is appointed by the contracting authority and therefore his choice is not open to complaint.

- The expert may be heard in criminal proceedings (Article 143(1) of the Code of Criminal Procedure), whereas the compiler of the expert statement or written confirmation may be heard only as a witness (Article 141(3) of the Code of Criminal Procedure).

- The expert shall be allowed to consult the file, whereas the compiler of the expert statement or written confirmation shall be allowed to consult its contents only to the extent necessary [13].

Conclusion. While the expert opinion and the expert report are based on expert knowledge, they differ in process and legal weight. Expert opinion has a stronger evidentiary value and is associated with stricter formalities and procedural rules. The appropriateness of using one or the other depends on the particular situation and the requirements of the particular area of law.

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