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FALSE EXPERT REPORT

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This paper explores the legal dimensions and implications of false expert reports in criminal proceedings within the Slovak Republic. The main objective is to provide a comprehensive legal analysis of the criminal liability of experts who knowingly submit inaccurate, misleading, or fabricated reports, focusing on Section 347 of the Slovak Criminal Code. The paper begins by outlining the role of experts in the criminal justice system, their professional responsibilities, and the standards of impartiality and objectivity that are legally required in the preparation of expert opinions. It further discusses the procedural rules for appointing, excluding, and evaluating experts in criminal cases, emphasizing the importance of safeguarding the fairness and reliability of evidence obtained through expert testimony. The paper also delves into how courts assess the admissibility and credibility of expert reports, highlighting common deficiencies such as logical inconsistencies or omissions of key facts that may affect the integrity of judicial decisions. Attention is given to situations in which an expert may commit a criminal offense by submitting a false report, whether intentionally or through gross negligence. Real case examples and judicial interpretations are used to illustrate how the judiciary determines the existence of bias or fabrication in expert outputs. Special focus is placed on the procedural measures that courts may adopt to verify the accuracy of expert conclusions, such as expert cross-examination, appointment of additional experts, or exclusion of partial experts. In conclusion, the thesis emphasizes the critical need for objective and professionally sound expert input in the judicial process, as errors or deliberate misrepresentations in expert reports may significantly distort the course of justice, affect the rights of the accused, and undermine public trust in the criminal justice system.

Key words: expert opinions, expert, evidence, false expert opinions.

Матіс Якуб. Неправдивий експертний висновок.

У цій статті досліджуються правові аспекти та наслідки неправдивих експертних висновків у кримінальних провадженнях у Словацькій Республіці. Основна мета - надати комплексний правовий аналіз кримінальної відповідальності експертів, які свідомо надають неточні, оманливі або сфабриковані висновки, зосередивши увагу на статті 347 Кримінального кодексу Словаччини. Документ починається з окреслення ролі експертів у системі кримінального правосуддя, їхніх професійних обов'язків, а також стандартів неупередженості та об'єктивності, які вимагаються законом при підготовці експертних висновків. Далі розглядаються процесуальні правила призначення, відводу та оцінки експертів у кримінальних справах, підкреслюється важливість забезпечення справедливості та достовірності доказів, отриманих за допомогою експертних висновків. У документі також розглядається, як суди оцінюють допустимість і достовірність експертних висновків, виділяючи типові недоліки, такі як логічні неспільності або пропуски ключових фактів, які можуть вплинути на обґрунтованість судових рішень. Увагу приділено ситуаціям, в яких експерт може вчинити кримінальний злочин, надавши неправдивий висновок навмисно або через грубу недбалість. На прикладах реальних справ та судових тлумачень показано, як судові органи визначають наявність упередженості або фальсифікації в експертних висновках. Особлива увага приділяється процесуальним заходам, які суди можуть вжити для перевірки точності експертних висновків, таким як перехресний допит експертів, призначення додаткових експертів або виключення часткових експертів. Насамкінець тези підкреслюється критична потреба в об'єктивних і професійно обґрунтованих експертних висновках у судовому процесі, оскільки помилки або навмисні перекочення в експертних висновках можуть суттєво спотворити хід правосуддя,

вплинути на права обвинувачених і підірвати довіру громадськості до системи кримінального правосуддя.

Ключові слова: висновки експертів, експерт, докази, неправдиві висновки експертів.

PROBLEM STATEMENT

Experts in criminal proceedings play a crucial role in addressing factual issues within the framework of evidence evaluation. To clarify facts essential for decision-making in a case, they prepare expert opinions, statements, and, in complex cases, forensic expert reports. These outputs must be objective, impartial, and based on professional methods, as their accuracy and truthfulness are fundamental to ensuring fair judicial decisions.

In practice, however, situations arise where expert reports are incomplete, illogical, or contradictory, or where it is impossible to determine the facts on which the expert based their conclusions. Upon appointment, the expert must be informed of their obligation to promptly disclose any circumstances that could lead to their exclusion or prevent them from acting in the case. They must also be advised of the significance of the expert report in the public interest and the criminal consequences of knowingly submitting a false expert opinion. If an expert deliberately prepares a false or distorted report, they may commit the criminal offense of false expert opinion, which undermines the integrity and reliability of the entire legal system.

RESEARCH OBJECTIVE

The aim of this thesis is to analyse expert activities and the reliability of expert reports, with a particular focus on the legal aspects of the criminal offense of false expert opinion, as regulated by Section 347 of Act No. 300/2005 Coll., the Criminal Code.

STATUS OF THE DEVELOPMENT OF THE PROBLEM

Expert

On the procedural legal level, the issue of expert examination, expert reports and expert statements as means of evidence is expressed in the sixth title of the third part of Act No. 301/2005 Coll., the Code of Criminal Procedure (hereinafter referred to as the “Criminal Procedure Code”), under the title “*Expert activity and expert activity*.” The status of an expert and related issues with expert activity and professional activity in criminal proceedings are regulated in Act No. 382/2004 Coll. on Experts, Interpreters and Translators (hereinafter referred to as the «Act on Experts») [1, p. 460].

An expert has a different status in criminal proceedings from the procedural parties, law enforcement authorities and the court. An expert is brought into criminal proceedings in order to clarify, on the basis of his or her expertise, a fact relevant to the criminal proceedings [2, p 460]. It follows that the expert is obliged to maintain objectivity and impartiality. His role does not consist in carrying out the evidentiary process, evaluating evidence or resolving legal issues. An expert’s primary mission is to provide expert opinions on factual issues falling within his or her professional competence, which is defined by his or her registration in the list of experts.

The Supreme Court of the Czech Republic has also attempted to define the term ‘expert’ in its case-law. It defined him as a person who, on the basis of his expertise, analyses facts determined by a public authority and, in an expert opinion, presents to that authority his professional conclusion based on an objective assessment of the relevant facts [3].

According to Section 2(1) of the Experts Act, an expert is «*a natural or legal person, unless otherwise provided in Section 19(5), authorised by the State to carry out activities under this Act, who is entered in the list of experts, interpreters and translators or not entered in this list, if he is appointed as an expert, translator or interpreter under Section 15.*» The aforementioned provision allows a person not registered in the list of experts to be appointed as an expert in proceedings before a court or other public authority if:

- there is no person registered in the relevant field or branch; or
- there is a registered expert who could be admitted to the proceedings, but is unable to perform the required act or would involve disproportionate difficulty or expense.

It follows from the wording of section 15 of the Experts Act that the appointment of an ad hoc expert is only of a subsidiary nature. Primarily, it is necessary to appoint experts duly registered in the list maintained by the Ministry of Justice of the Slovak Republic for the performance of expert activities [4].

Expert activity

An expert, as a professionally erudite person in criminal proceedings, prepares expert statements or expert opinions in the framework of which he or she applies

- expert activity,
- forensic-technical work or
- consultative activity [5].

Expert activity takes precedence over expert activity, it is used in cases where there is a need to apply expert knowledge, and it is performed outside expert activity. In simple cases, a written confirmation is sufficient. If, due to the complexity of the case, it is not possible to make use of professional activity, the expert shall be called in [6].

An expert may take part in the performance of procedural acts such as interrogations, reconstructions, investigative experiments or inspections. In the course of his/her activities, he/she is entitled to propose to the law enforcement authorities or the court the performance of specific procedural acts necessary for the preparation of his/her expert report. In addition, the expert may gain access to the case file insofar as this is necessary for the proper conduct of the expert examination [7].

An expert may not resolve questions of law, which means that he or she is not authorized to interpret statutes or ordinances, to refer to case law, or to formulate conclusions as to whether the facts have been fulfilled. On the other hand, if an expert makes unauthorised comments on questions of law in an expert report, such a fact does not automatically render the entire expert report unusable. What remains usable is that part of it which deals exclusively with technical questions of fact and does not interfere with the legal assessment [8].

The expert may also not evaluate the evidence and thus cannot express an opinion on the guilt or innocence of the accused or assess whether any conduct was fraudulent. It is also true that an expert may not conduct the evidence himself [9].

Appointment of an expert

The CID in the preparatory proceedings and the court in the proceedings before the court admits the expert by a resolution against which a complaint is admissible - a complaint may also be lodged by the expert, the complaint has no suspensive effect, i.e. the expert may proceed with the preparation of the expert report even before the resolution on the admission of the expert becomes final. The accused or the injured party may, in the preparatory proceedings as well as in the proceedings before the court, bring in an expert by a letter (informal request) at his/her own expense and may (i.e. do not have to) file the expert's report in the case file. The complaint is admissible on substantive grounds or because of the person of the expert [10].

Substantive grounds in the context of the exclusion or complaint against the admission of an expert include, in particular:

- Objections to the reasonableness of bringing in an expert, for example, where the fact to be clarified by the expert examination has already been established by other evidence in the course of the criminal proceedings.
- Objections to the correctness of the choice of the field in which the expert has been brought into the proceedings, where that choice was not reasonable or correct in the light of the subject-matter of the criminal proceedings.
- Objections to the formulation of the questions to be answered by the expert in order to assess as accurately and thoroughly as possible the facts relevant to the criminal proceedings, since the formulation of the questions may also influence the outcome of the expert examination recorded in the expert report [11].

Facts preventing a person from acting as an expert in a case may include, in particular, facts justifying the refusal to carry out expert work under the Expert Witness Act. The general interest lies primarily in the achievement of the purpose of criminal proceedings, as defined in Article 1 of the Criminal Procedure Code.

PRESENTATION OF THE MAIN MATERIAL

False legal report

In criminal proceedings, the principle of establishing the facts beyond reasonable doubt (Article 2(10) of the Criminal Procedure Code) applies, according to which it is necessary to clarify not only the facts that are against the accused, but also those that speak in his favour. The aim is to reach a fair decision based on objective facts.

Where it is necessary to call upon an expert to assess a technical question, his expert opinion must be based on an objective assessment, free from any outside influence. The requirement of the expert's impartiality is enshrined in Section 11 of the Law on Experts and is assessed on a case-by-case basis.

An expert shall be excluded from the proceedings if there is any doubt as to his or her impartiality, in particular in relation to his or her relationship to the case, the client or other interested parties. It is therefore not necessary to prove actual bias in order to exclude him, but the mere existence of a reasonable doubt is sufficient. The expert must be warned, when he is called upon, of the obligation to disclose without delay the facts which might disqualify him or prevent him from acting as an expert in the case.

An expert's bias may arise not only from his relationship to the case, the principal or other interested parties, but also from his conduct, statements or acts performed before the expert report is drawn up. If the conduct of the expert shows that he has already formed an opinion on the matter in question or presents premature and unsubstantiated conclusions, this may be grounds for his exclusion from the proceedings. This problem arises in particular in cases where the expert has previously expressed an opinion on the matter or has been directly involved in it, which could compromise his objectivity and impartiality [12].

It is not only subjective feelings about whether or not an expert feels biased that are decisive for the decision to exclude or not to exclude an expert. The grounds for exclusion must be based on objective, specific and sufficiently serious facts that demonstrate his bias or lack of bias [13].

Before preparing an expert report, the expert must also be instructed about the criminal consequences of a knowingly false expert report, specifically to fulfill the elements of the criminal offense of false expert opinion, interpretation act and translation act pursuant to Section 347 of the Criminal Code.

"Who, as an expert, interpreter or translator

(a) before a court, a public prosecutor or a police officer in criminal proceedings or before a court in civil proceedings and in administrative proceedings or in enforcement proceedings or in proceedings before a public authority or before an arbitration tribunal, makes a false statement about a circumstance which is material to the decision or conceals such a circumstance; or

(b) when giving an expert opinion or performing an interpreting or translation act on the basis of a contract, causes minor damage to another by making an untrue statement about a circumstance which is material to the person, to whom the expert opinion or the interpreting or translation act relates or is of material importance for the decision on which the expert opinion or the interpreting or translation act is based, or if he conceals such a circumstance, shall be punished by imprisonment for one to five years." [14].

The object of this offence is the interest that the court or other authority should decide the case on the basis of a true and correct finding of the facts of the case [15].

The objective aspect of the offence has two alternative forms of action and consists of either:

- in the expert's misrepresentation of a circumstance relevant to the decision, or in the concealment of such a circumstance from the court, prosecutor or police officer in criminal proceedings; or
- in causing minor damage to another when giving an expert opinion by stating an untruth about a circumstance which is of material importance to the person to whom the expert opinion relates or which is of material importance for the decision on which the expert opinion is based, or concealing such a circumstance [16].

Hence, an expert opinion can be considered as a false expert opinion if all expert conclusions and all essential circumstances are in contradiction with the objective reality, i.e. it is completely fabricated, falsified, etc.—it will be an expert opinion drawn up purely on purpose, where the experts did not carry out the examination by the declared methods at all, or they have completely fabricated their conclusions [17].

A circumstance will be concealed if the expert was not expressly asked about it; however, he must know that it is a circumstance that is essential to the decision [18].

A circumstance essential to the decision is a key element without which the offence would not have been committed. The assessment of such a circumstance is always dependent on the particular case and may not be a circumstance of decisive importance. It will usually be a fact which the competent authority must take into account in deciding the question to be decided. In criminal proceedings, it will be all the circumstances which may affect the decision on guilt or punishment, on the imposition of a protective measure or on the claim of the victim.

An expert fulfils the elements of the objective aspect of this criminal offence if, in a written expert report or in an interrogation in which he or she gives an expert report or supplements it, he or she deliberately gives a false description of the facts which he or she has established in the course of expert

activity, or conceals the establishment of a fact of material importance, or deliberately gives a false conclusion in the expert report [19]. In terms of culpability, this is a deliberate offence.

The following criteria must be used to evaluate an expert's report:

- the legality of the evidence or admissibility of the evidence
- the probative value (relevance) of the expert opinion
- assessment of the credibility and veracity of the expert opinion [20].

In the Czech Republic, the objective aspect of the criminal offence of false testimony and false expert opinion according to § 346 of Act No. 40/2009 Coll. *Trestní zákoník*, extended by another alternative of the act, namely gross misrepresentation. In order to incur liability for this offence, the expert report submitted by the expert must contain at least one of the three defects (it is sufficient if each of them is present separately):

- falsity,
- gross misrepresentation or
- Incompleteness [21].

An expert report is grossly misrepresented if it is not false in its entirety, but if it is false only in part, with the result that its overall appearance is misleading beyond the extent of the permissible difference of opinion between the experts [22].

It is not necessary to consider to what extent the expert report was relevant to the purpose for which it was used, since that need not even be known to the experts; nor is it decisive if the competent authority in the proceedings does not accept the conclusions of the expert report or if it does not make a decision on the basis of the expert report in question [23]. Similarly, it does not depend on the purpose pursued by the expert by the defective expert opinion (e.g. to help a particular person, to save time, or to make his work easier, etc.).

However, the general courts are often suspicious of expert opinions that are tainted by some of the parties, and quite unjustifiably so in view of the statutory wording. At the same time, I cannot agree with the generally presented opinion that expert reports submitted by a party are always in favour of the accused and are then globally all considered to be purposeful and unreliable. After all, it is logical that the accused does not submit an expert report in criminal proceedings which should incriminate him in the commission of a crime, and such expert reports are certainly produced, even at the request of the accused.

CONCLUSION

The separate procedural status of an expert in criminal proceedings, as a person distinct from the procedural parties, the court, the CID, the injured party, the person making the expert statement, the accused, the consultant, allows for the criminal sanction of the expert for committing a false expert opinion within the meaning of Section 347 of Art. Act, or the possible criminal punishment of an expert as a participant (usually an assistant) in the criminal activity of another person (for example, credit fraud), the expert does not have the status of a public official, therefore, he/she cannot commit the crime of abuse of authority of a public official as a perpetrator or accomplice (however, he/she can also be in the position of a participant in this crime).

In the case of an expert's report, it is necessary to evaluate the entire process of forming expert evidence, including the preparation of the expert examination, the provision of supporting documents for the expert, the course of the expert examination, the credibility of the theoretical bases on which the expert justifies his conclusions, the reliability of the methods used by the expert, and the manner in which the expert's conclusions are drawn. The expert must not himself exclude some of the evidence submitted simply because it does not fit into his version of events. The reviewability of an expert's report is an essential characteristic of an expert's report. Examability means that the expert report also contains details of how the expert reached his conclusions, what methods he used, what evidence he relied on, and so on. In practice, it often happens that this part of the expert's report is missing in expert reports and it is not possible to examine what the expert relied on in formulating his conclusions (for example, the injuries of the victim are assessed by the expert, while the expert report does not indicate what documents the expert had at his disposal, i.e. whether he personally examined the victim, or whether he had at his disposal his medical records, medical findings, or even previous expert reports concerning his injuries, etc.).

The first step in doubting the completeness and accuracy of an expert's report is to question the expert. The examination of the expert(s) cannot be dispensed with in the preparatory proceedings if

doubts arise as to the reliability and completeness of the written expert report. In such cases, the pre-trial authorities are obliged to question the experts and to remove any ambiguities and incompleteness in the report. In general, it is for the court to examine the accuracy and credibility of the expert's report and to exercise caution to that end. Undoubtedly, the primary duty of the courts in relation to the prevention of perjured expert reports is to require additions and clarifications from the experts; in case of persistent doubts about the accuracy of the expert report, it is appropriate to bring in another expert within the meaning of section 146 of the Civil Procedure Code.

REFERENCES:

1. IVOR, J., POLÁK, P., ZÁHORA, J., (2021) *Trestné právo procesné. I, Všeobecná časť. 2. vydanie*. Bratislava: Wolters Kluwer SR, 2021. ISBN 9788057103325. [in Slovak].
2. IVOR, J.; POLÁK, P., ZÁHORA, J., (2021) *Trestné právo procesné. I, Všeobecná časť. 2. vydanie*. Bratislava: Wolters Kluwer SR, 2021. ISBN 9788057103325. [in Slovak].
3. Judgment of the Supreme Court of the Czech Republic, file no. 21 Cdo 845/2013 of 14 January 2014.
4. Section 2 of Act No. 382/2004 Coll. on Experts, Interpreters and Translators.
5. KOČAN, Š., (2016) *Znalec a jeho postavenie v prípravnom konaní*, URL: <https://www.akademiapz.sk/sites/default/files/OVVP/004%20%20KO%C4%8CAN%20%20Znalec.pdf> [in Slovak].
6. Sections 141-142 of Act No. 301/2005 Coll. Criminal Procedure Code.
7. ŠAMKO, P., (2017) *Znalec v trestnom konaní – vybrané problémy*. In *Právne listy*, 2017. URL: <https://www.pravnelisty.sk/clanky/a600-znalec-v-trestnom-konani-vybrane-problemy> [in Slovak].
8. R 61/2003.
9. ŠAMKO, P., (2017) *Znalec v trestnom konaní – vybrané problémy*. In *Právne listy*, 2017. URL: <https://www.pravnelisty.sk/clanky/a600-znalec-v-trestnom-konani-vybrane-problemy> [in Slovak].
10. Sections 142 of Act No. 301/2005 Coll. Criminal Procedure Code
11. KOLESÁR, J., (2005) *Návrat ku spôsobu príberania znalca do trestného konania*. In: *Bulletin slovenskej advokácie*, 2005, vol. 11, no. 11, p. 8–15. ISSN 1335-1079. [in Slovak].
12. Resolution of the Supreme Court of the Czech Republic, file no. 4 Tz 90/2006 of 8 February 2007
13. DANKOVČÍK, J., RAJČINOVÁ KNAPÍKOVÁ, A., (2014) *Zákon o znalcoch, tlmočníkoch a prekladateľoch*. Komentár. 1. vyd. Bratislava: Wolters Kluwer, 2014. ISBN 978-80-8168-121-9. [in Slovak].
14. Section 347 of Act No. 300/2005 Coll. Criminal Code
15. BURDA, E. et al., (2011) *Trestný zákon II. 1. vydanie*. Praha: C.H. Beck, 2011, ISBN 978-80-7400-394-3. [in Slovak].
16. BURDA, E. et al., (2011) *Trestný zákon II. 1. vydanie*. Praha: C.H. Beck, 2011, ISBN 978-80-7400-394-3. [in Slovak].
17. Fryšták, M., (2022) *Trestní odpovědnost znalců Křivá výpověď, nepravdivý, hrubě zkreslený a neúplný znalecký posudek - § 346 TrZ, 2022*. URL: <https://www.akutne.cz/res/publication/000572/attach-003-03-frystak-2022-11-01-00-04-21.pdf> [in Slovak].
18. Fryšták, M., (2022) *Trestní odpovědnost znalců Křivá výpověď, nepravdivý, hrubě zkreslený a neúplný znalecký posudek - § 346 TrZ, 2022*. URL: <https://www.akutne.cz/res/publication/000572/attach-003-03-frystak-2022-11-01-00-04-21.pdf> [in Slovak].
19. BURDA, E. et al., (2011) *Trestný zákon II. 1. vydanie*. Praha: C.H. Beck, 2011, ISBN 978-80-7400-394-3. [in Slovak].
20. ŠAMKO, P., (2017) *Znalec v trestnom konaní – vybrané problémy*. In *Právne listy*, 2017. URL: <https://www.pravnelisty.sk/clanky/a600-znalec-v-trestnom-konani-vybrane-problemy> [in Slovak].
21. NS 4 Tdo 439/2021
22. Fryšták, M., (2022) *Trestní odpovědnost znalců Křivá výpověď, nepravdivý, hrubě zkreslený a neúplný znalecký posudek - § 346 TrZ, 2022*. URL: <https://www.akutne.cz/res/publication/000572/attach-003-03-frystak-2022-11-01-00-04-21.pdf> [in Slovak].
23. 6 Tdo 111/2020.