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Expertise as Evidence in Court Procedings

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Abstract

Current issues of expert testimony in criminal proceedings indicate that this almost regular part of criminal proceedings, "dominant evidence, evidence from which much is always expected", is largely blocked in its contribution to the efficient and reliable outcome of criminal proceedings by the mismatch between modern requirements, new practice and old normative frameworks. The legal regulation of expert testimony should enable this evidence, most often "decisive evidence", to contribute maximally, within the procedural framework, to the efficient and reliable determination of the relevant factual situation. The examination of evidence through expert testimony in criminal proceedings continues to point to numerous controversial issues that can be reasonably assumed to significantly affect the quality of establishing the disputed legally relevant facts, as well as the unjustifiably long duration of the proceedings. Some of these issues relate to irregularities in the conduct of criminal proceedings, while others concern the need to review existing solutions in basic and supplementary procedural legislation.

Keywords: *Criminal Procedure Code of the Kosovo, Expert examination, Evidence, Court Proceedings, Rights of Experts*

1. Introduction

The principle of truth is one of the crucial principles of criminal procedure, which leads to the ultimate goal – to impose a criminal sanction on the perpetrator of a criminal offense as provided for by positive criminal law substantive regulation, and to ensure that no innocent person is convicted. The court, the prosecutor's office and other bodies participating in criminal proceedings are obliged to truthfully and completely establish all facts important for making a lawful decision, both those that incriminate the suspect or accused (in peius) and those that benefit him (in favorem).

This duty, as well as the right of the criminal procedure authorities to assess the existence of facts, is not bound by any special formal evidentiary rules, nor is it bound by any

special deadline, and the establishment of facts is carried out throughout the proceedings (including under extraordinary legal remedies) through their own observations, and more often through the presentation of evidence at the main hearing by the parties and the court.

On this arduous journey of establishing the facts, judges, prosecutors and authorized officials often find themselves in areas for which they have insufficient or no professional knowledge or skills, and are therefore forced to seek professional assistance from experts. This professional assistance is also often sought by the suspect or accused.

Expertise and its application in criminal proceedings for the purpose of detecting and proving criminal offenses cannot be replaced by any other means of evidence, both in the investigation and at the main trial.

We can safely say that there are no limits to the type of expertise that can appear in criminal proceedings.

2. Expertise as Evidence in Court Procedings

Current issues of expert testimony in criminal proceedings indicate that this almost regular part of criminal proceedings, "dominant evidence, evidence from which much is always expected", in its contribution to the efficient and reliable outcome of criminal proceedings, is largely blocked by the mismatch between modern requirements, new practice and old normative frameworks. The need for expert testimony in court proceedings arises in situations in which the court does not possess the necessary professional knowledge necessary to establish all relevant facts and make a final decision, which is why it calls on the expert to establish the necessary facts by applying the professional knowledge at its disposal. In such circumstances, the court is faced with the formal and procedural authority to make a court decision, but in a specific situation without the necessary professional specialized knowledge for this, and on the other hand, an expert with the necessary expertise and factual ability to significantly determine the court decision, but without the formal competence to decide in a criminal matter. The legal regulation of expert testimony should enable this evidence, most often "decisive evidence", to contribute maximally to the efficient and reliable establishment of the relevant factual situation within the procedural framework. However, practice shows that this very evidence very often slows down, complicates and dilutes the evidentiary process. It seems as if the not so rare legislative interventions in the past decade aimed at creating a more modern and efficient criminal procedure have bypassed expert testimony (Jokić, 2009: 182).

The examination of evidence through expert testimony in criminal proceedings continues to point to numerous controversial issues that can be reasonably assumed to significantly affect the quality of establishing the disputed legally relevant facts, as well as the unjustifiably long duration of the proceedings. Some of these issues relate to irregularities in the conduct of criminal proceedings, while others concern the need to review existing solutions in basic and supplementary procedural legislation.

These issues have been perceived as controversial for a long time and as such, despite the fact that they cause long-term and poor-quality expert opinions, they remain unresolved and untouched by the (long-term) reform of criminal legislation. In the meantime, in criminal

proceedings, although incompatible with the existing normative framework, a “new” practice of the so-called private expert opinions is emerging and persisting (Jokić, 2009: 184).

2.1. Determination of expertise and expertise

Although the Criminal Procedure Code consistently requires that expert testimony be ordered exclusively by a written order of the body conducting the proceedings, research into the practice of expert testimony in criminal proceedings shows that in most cases in which expert testimony has been conducted, there is no expert testimony order, and even where there is one, clearly posed questions are usually avoided (Milošević, 1996: 206). The most general legal formulation is most often used without a more detailed definition of the task, so the expert testimony order represents the simplest legal framework for the request, which is in no way particularly appropriate to the specific case. In rare cases of specifically posed questions, it is most often added that "all other circumstances should also be considered", which allows the expert to investigate more than he should, but at the same time less than he should.

By specifying questions for the expert, the judge, as the person ordering the expert opinion, shows how much he understands the nature of the work of the specific expert and the scope of his discipline, as well as how well he is familiar with the details of the case he is conducting, because it is from him that the specific questions arise. If the order is limited to general legal formulations, the expert remains in doubt regarding the concretization of the task, and questions that arise only after the written report of the expert, most often at the main hearing, lead to additional or repeated expert opinions and significant delays in the procedure. It is necessary for the body conducting the criminal proceedings to approach the formulation of the expert opinion order with utmost conscientiousness and responsibility, based on a thorough study of all the details of the specific case.

The formulation of the task in the order ordering the expert examination is an important act of crucial importance for a successful, timely and properly conducted expert examination, because ultimately, undefined expert examination tasks and highly formalized management of expert examination by the criminal procedure authority can lead to a situation in which in a specific criminal procedure "not only the truth about the case is fabricated, but also a large part of the case itself, especially if it is not firmly based on material evidence" (Kostić, 1996: 183).

Expertise, as an act of providing evidence in criminal proceedings in the Republic of Kosovo, may be performed at the initiative of the parties, the defense attorney and the court (Art. 136, 137, 140 and 141 of the CPC of the Republic of Kosovo). If an expert is engaged by the prosecutor or the court, the basic formal prerequisite for expertise is the existence of an order for expertise, and exceptionally, authorized officials may also order the necessary expertise. The head of the expertise (the body that ordered the expertise) will state in the order the facts on which the expertise is to be performed, and in order to issue a quality order from which it will be unambiguously known which questions are to be answered by the expertise, it is necessary to learn as much as possible about the subject of the expertise and the methods of expertise before ordering the expertise in order to be able to engage an expert of the appropriate profession. In addition to legal knowledge, it is also necessary for the prosecutor or judge to have certain general knowledge, as well as the knowledge of at least an averagely educated and informed person.

An expert opinion order is an act of a prosecutor or judge by which, as a rule, a specific expert (or institution) is assigned a written task that he or she should perform. However, in practice, it happens that the prosecutor or judge, due to his or her lack of knowledge of the criminal case, including the expert opinion methods, is unable to ask even guiding questions, and so drafts standard, general expert opinion orders, which directly leaves it up to the expert to assess what the orderer is asking of him or her. Often, the emphasis in expert opinion orders is placed on a formulation such as "consider all other relevant data that the expert considers necessary for a fair and objective analysis". The point of such an order is that its formulation clearly indicates how much the "orderer" understands a particular problem, how well-versed he or she is in the details of a specific criminal case that gives rise to the questions that the expert must answer, and finally, it indicates the specific nature of the expert's work and the limits of his or her scientific discipline or skill. Therefore, much more work should be done on the criminalistic education of criminal procedure authorities (prosecutors and judges) regarding:

- familiarization with current developments in science and technology that enable the provision of specific answers,
- possibilities and limitations in terms of available human resources – experts, in the Republic of Kosovo, neighboring countries, and beyond,
- possibilities and limitations of available technical resources – institutions or individual experts in the Republic of Kosovo, neighboring countries, and beyond,
- conducting complex expert examinations, which type of expert examination should be performed first, so that other expert examinations can be performed without hindrance (without destroying traces), etc.

In practice, the question arises when an expert opinion can be ordered by authorized officials, and there are different and even conflicting opinions on this. The Criminal Procedure Code of the Republic of Kosovo regulates this issue in such a way that it provides that it is the duty of an authorized official, after informing the prosecutor, to conduct an on-site investigation and order the necessary expert opinions, except for the examination, autopsy and exhumation of the corpse. The Criminal Procedure Code of the Republic of Kosovo provides that an authorized official may, exceptionally, after informing the prosecutor, conduct an on-site investigation and order the necessary expert opinions. In both cases, determining the necessary expert opinions should be distinguished from ordering an expert opinion. The legislator has prescribed these actions in the provisions regulating the actions of authorized officials in the investigation, under the title "On-site investigation and expert opinion". Therefore, determining the necessary expert opinions implies that, after informing the prosecutor, an authorized official may conduct an on-site investigation and order the necessary expert opinions. And what those expert opinions will be, that is questio facti. Namely, due to the risk of delay, the expert examination together with the on-site investigation in these cases is considered an urgent action. Therefore, an authorized official may only exceptionally order the necessary expert examinations, and this exceptionality must be justified by a detailed explanation of the urgency of the procedure without a written order from the prosecutor, with the obligatory note that the prosecutor is aware of and agrees with the ordering of the expert examination (actions under the supervision of the prosecutor) and that he will submit a written order as soon as possible. Accordingly, the jurisdiction of authorized officials in relation to the on-site investigation and expert examination is secondary

and conditional: secondary, because other authorities (the prosecutor and the court) are primarily responsible for these actions, and conditional, because authorized officials can undertake these actions only in exceptional circumstances, and after informing the prosecutor about it (Kulenović, 2005: 253).

The Criminal Procedure Code does not recognize an oral order for expert testimony, but since the order for expert testimony is issued only in written form by the court or prosecutor, it is reasonable to conclude that there should be no obstacle for the prosecutor, after giving oral consent, to subsequently submit an order for expert testimony to which the expert may refer when providing findings and opinions, as well as to the oral consent issued by the prosecutor directly to the expert or indirectly through an authorized official. All of this should be formalized by the authorized official with appropriate documents, such as the report on the crime scene investigation, an official note on the conversation with the prosecutor, a request for expert testimony sent to the expert witness, which will state the time and content of the conversation with the prosecutor, stating the prosecutor's consent to conduct the crime scene investigation and order an expert testimony, etc. Cooperation and information of the prosecutor can certainly be achieved at any time and from any place in today's era of modern telecommunications devices. In any case, it is common knowledge that the authorized official is the subject of the operational part of the investigation, and the prosecutor is the subject of the legal part of the investigation (Vidić, 2015: 4).

Since the law here, in addition to the crime scene investigation and reconstruction, provides for the possibility of expert witnesses being present at other investigative actions, this implies, among other things, inviting an expert witness to attend the search, but then the performance of this action is, as a rule, formalized by a search order, which should be accompanied by an order for the expert witness to attend the performance of this evidentiary action and, if necessary, to take samples and then conduct an expert examination of suspicious substances. It must be noted here that authorized officials often make mistakes when performing a search, especially when they conduct the search with the order of an authorized court, during which they find certain objects or traces for which it is necessary to provide an expert opinion to the plaintiff, but without a written order from the prosecutor or judge, the necessary expert examinations are ordered. On this occasion, the meaning of the legal provisions is ignored, according to which the court is the only one obliged and authorized to dispose of seized objects that were requested and seized during the search. Also, if during the search of an apartment, premises or person, objects are found that are not related to the criminal offense in question, for which the search was conducted, but for which there is a suspicion that they are related to another criminal offense, the authorized official should not, even in this case, on his own initiative order the necessary expert opinions, because his obligation is to inform the prosecutor about this and transfer to him the responsibility for the possible opening of an investigation and further disposition of the seized objects (Mrvić-Petrović, Ćirić, Počuča, 2015: 724).

In the internal organization of the Ministry of Internal Affairs of the Republic of Kosovo, the Forensic Science Center is an internal organizational unit at the headquarters of the Ministry (hierarchically higher), and police stations and security centers are internal organizational units outside the headquarters of the Ministry (hierarchically lower). The Forensic Science Center, with its Department for Forensic Science Expertise, in its regular work, supervises, controls and instructs the application and use of forensic science in public security

centers and police stations, and thus controls the work on certain criminal cases. Therefore, it is unacceptable to believe that a certain police station or other police organizational level, when conducting an expert examination on a submitted case, when bylaws cover cases from the domain of forensic science in police stations and public security centers, automatically includes cases submitted to it for expert examination. In addition, when the suspect or injured party is employed by the Ministry of Internal Affairs of the Republic of Bosnia and Herzegovina, which is a common situation given the number of employees of the Ministry of Internal Affairs, the question is whether there is a reason to exclude an expert from the KTC for the reasons stated above[1].

The number of committed crimes is constantly growing, but the number of expert opinions is also growing at the same time. However, the number of expert opinions is also growing in percentage terms in relation to the number of committed crimes. There is almost no criminal proceeding in which at least one expert opinion is not conducted. In order to establish the existence of a criminal offense and a person as its perpetrator, real (material) evidence is increasingly being used, and its number is growing along with the number of expert opinions, because material evidence speaks the language of things, and an expert who understands that language is needed (Graspberg, 1958: 280). The general development of science and technology is also modernizing various forms of human activity that require the use of scientific and technical achievements in committing criminal activities, but also in suppressing, detecting and proving them. Therefore, judges increasingly need the assistance of experts in making final decisions, who, in accordance with the rules of their scientific field, technical knowledge, skills or art, provide opinions that help in determining and clarifying disputed facts and assessing evidence (Simonović, 2004: 330). Expertise can only be performed in relation to the clarification and determination of some important fact, as a rule, when it comes to the elements of the essence of a criminal offense or important issues of criminal liability, because it would not be appropriate to determine the expertise of some unimportant, irrelevant and secondary facts (Jokić, 2009: 182-183).

Expertise, as a procedural act, is regulated by the Criminal Procedure Code of Kosovo[2] throughout the entire course of the procedure (both in the preliminary and main proceedings), and must therefore be viewed as a system of norms. Expertise can be from a wide variety of fields of science, technology, skill or art, so that their enumeration would be pointless. Given this statement, the legislator has set general provisions on expertise, regardless of the type of expertise, which regulate the issues of determining expertise, the rights and obligations of experts, the resolution of procedural relations and the framework procedure for expertise (Art. 136–140. CPC RK). However, the legislator has also foreseen special types of expertise, for which, in addition to the aforementioned general norms, these special provisions apply, which regulate specific issues of certain types of expertise, such as cases:

- when in a fatal case there is a suspicion that the death was caused by a criminal offense or that it is related to the commission of a criminal offense (examination and autopsy of the

[1] This exemption is decided by the prosecutor during the investigation, so this is an additional argument that ordering an expert opinion by an authorized official must be applied extremely restrictively and only for reasons of urgency in order to clarify certain facts during the on-site investigation.
[2] Criminal Procedure Code of Kosovo (“Official Gazette of the Republic of Kosovo” No. 37/28).

corpse, paragraph 1, Article 138 of the Criminal Procedure Code of the Republic of Kosovo),

- if there is a suspicion of poisoning (toxicological examination, paragraph 2, Article 138 of the Criminal Procedure Code of the Republic of Kosovo),
- when it is necessary to determine the expert assessment of physical injuries, as a rule by examining the injured person, and if this is not possible or necessary, on the basis of medical documentation or other data in the files (examination of physical injuries, paragraph 3, Article 138 of the Criminal Procedure Code of the Republic of Kosovo),
- when it is necessary to perform a physical examination of the suspect or accused in order to determine facts important for the criminal procedure (physical examination and other actions from paragraph 4, Article 138 of the Criminal Procedure Code of the Republic of Kosovo),
- if there is a suspicion that the suspect or accused's mental capacity has been excluded or reduced, or that the suspect or accused committed the crime due to alcohol or drug addiction, or is unable to participate in the proceedings due to mental disorders (Art. 148 of the Criminal Procedure Code of the Republic of Kosovo),
- if it is necessary to undertake an expert examination of business books (Art. 148 of the Criminal Procedure Code of the Republic of Kosovo),
- if it is necessary to determine the identity or the fact whether the discovered traces of material originate from the suspect or accused or the injured party (DNA expert examination, Art. 146 of the Criminal Procedure Code of the Republic of Kosovo).

2.2. Prerequisites for performing the duties of an expert witness in a proceeding

The expertise of an expert witness is the most important characteristic for his engagement in a specific case, but not every expert can be unconditionally appointed as an expert witness. The Law on Criminal Procedure of Kosovo has established the conditions and procedure for appointing experts in judicial, administrative and misdemeanor proceedings and has prescribed that the following can be appointed as experts:

- a person who is a citizen of Kosovo,
- a person who is legally competent,
- a person who has not been sentenced to imprisonment for criminal offenses against order and security, for criminal offenses against humanity, international law, against official or other responsible duty or for another criminal offense committed for gain or other low motives,
- a person who has a university degree (with prescribed exceptions) and appropriate professional knowledge and qualifications, as well as practical skills and experience for a specific type of expert assessment,
- a person who has at least five years of work experience in the areas specified by the candidate in the application for appointment,

- not to perform activities that are incompatible with the work of an expert and that the person is distinguished by high moral qualities.

The judge and prosecutor are free to select experts from the official list of permanent court experts, and in the event that they are currently unable to act or if there are other reasons (there is no such expert on the list in a certain field, reasons of urgency, etc.), other persons with certain professional knowledge may be appointed for a specific case. This method of appointing experts should be exceptional and additionally explained, because as a rule, permanent court experts should be more competent and professional in providing answers to the questions asked than ad hoc experts (Milošević, 1996: 200).

In practice, specific needs for the application of the knowledge of a certain type of artist or craftsman sometimes arise, which means that appropriate university or higher education knowledge is not primary, but rather it is a matter of assessment whether or not a person is an expert in their profession. This must be observed in particular in a broader sense in certain types of expertise (e.g. dactyloscopic, graphoscopic, mechanoscopic...) whose knowledge and skills can only be acquired in appropriate professional institutions, mainly police ones. Expertise of an expert, therefore, means both formal education in a certain field and many years of experience, notable results in work, sovereign knowledge of theoretical and practical problems of a certain field, mastery of modern methodology, constant monitoring and familiarization with developments and perspectives in the appropriate discipline. The Criminal Procedure Code of the Republic of Kosovo provides that an expert cannot be appointed:

- a person who has been injured by a criminal offence,
- a person who has been heard as a witness in the same case,
- a person to whom the suspect or the accused, his defence counsel, the prosecutor, the injured party, his legal representative or proxy, a spouse or common-law partner or relative by blood in the direct line up to any degree, in the collateral line up to the fourth degree, and by in-laws up to the second degree,
- a person who is in a relationship with the suspect or the accused, his defence counsel, the prosecutor or the injured party as a guardian, custodian, adopter, adoptee, foster or foster child,
- a person who cannot be heard as a witness,
- a person who is exempt from the duty to testify,
- a person who is employed by the suspect or the accused or the injured party in the same body, company or other legal entity or with an independent entrepreneur,
- a person who is employed by the injured party or the suspect or the accused,
- a doctor who treated the deceased,
- a person for whom there are circumstances that give rise to reasonable doubt as to his impartiality.

The prosecutor decides on the disqualification of an expert witness before the indictment is filed, and after the indictment is filed, the panel, the president of the panel or the judge, but in the legal remedies procedure, a verdict based on evidence obtained by an expert witness who had to be disqualified may be challenged. If a person who had to be disqualified is engaged as an expert witness, the court decision cannot be based on his findings and opinion. Another situation is when a party to the proceedings expresses his disagreement with the findings and opinion of the expert witness, and this cannot be a reason for disqualifying the expert witness, but a reason for refuting the conclusion – the evidence presented.

2.3. Obligations and rights of experts

2.3.1. Obligations

The obligation of an expert witness in criminal cases is to respond to the summons and to submit his findings and opinion to the court within the time limit specified in the order. The time limit may be extended at the request of the expert witness for justified reasons. The expert witness is also obliged, in civil cases, to submit his written findings and opinion, which must be substantiated, to the court before the hearing within the specified time limit. If he submits findings and opinions that are unclear, incomplete or contradictory to himself or to the established circumstances, he is obliged to supplement or correct them by order of the court, which he must do within the time limit set by the court. The obligation of an expert witness is to carefully consider the case before the start of the expert witness examination, to accurately state everything he observes and finds, and to give his opinion, impartially and in accordance with the rules of science and the profession. The Criminal Procedure Code precisely stipulates the obligations of experts during the examination and autopsy of a corpse. There are also obligations of experts in cases of suspicion that the defendant's mental capacity is excluded or reduced due to mental illness, retarded mental development or other mental disorder, and when it is mandatory to conduct an expert psychiatric examination of the defendant. The possibility of a mandatory physical examination of the suspect or defendant without their consent has been established, as well as taking a blood sample and undertaking other medical actions. The expert must submit his findings in writing, unlike the obligation he has in criminal proceedings, where the findings can also be given in the record before the court. The consequence of failure to comply with an order, or a court decision, in both criminal and civil proceedings is sanctioned by a fine (Milošević, 1996: 244).

On 28 February 1984, the Committee of Ministers of the member states of the Council of Europe adopted Recommendation No. R (84) 5 – On the principles of civil procedure for the improvement of the administration of justice, based on Article 15 (P) of the Statute of the Council of Europe. It states that the court should be provided with the powers necessary for the more efficient conduct of proceedings. For this purpose, certain principles have been established, and in principle No. 1, paragraph 4, it is stated that sanctions of reduction of remuneration, payment of costs or compensation for damages should also exist for a court expert who fails to submit a report or is unjustifiably late in submitting a report. National laws have implemented this provision (Mrvić-Petrović, Ćirić, Počuča, 2015: 722).

The content of the summons for the main hearing has also been determined, in which the expert must be warned of the consequences of failure to submit findings and opinions within the set deadline, i.e. unjustified absence from the hearing and the right to remuneration and

reimbursement of costs. The legal regulations therefore clearly determine the obligations of the court, i.e. failure to comply with clearly established obligations of the court in terms of warning the expert. Accordingly, the expert has no liability under the aforementioned provisions, if the court has not fulfilled all its obligations, and on the other hand assumes the liability of the court in the event of failure to fulfill its obligations arising from the aforementioned provision. Given all this, the legal solutions, in addition to representing the basis for the obligation, are also the basis for the right of experts to request the court, in civil proceedings, to determine in detail the task, i.e. the subject and scope of the expert examination, and to establish a deadline for submitting the findings and opinions of the expert in writing. (Mrvić-Petrović, Ćirić, Počuča, 2015: 724).

When providing a report, an expert witness is, on the one hand, obliged to maintain professional secrecy, but on the other hand, the law prescribes an obligation for him to use his professional knowledge in the field of medicine to provide answers to the controversial questions raised before the court. Along with the report and opinion, the expert witness most often also submits medical documentation. Bearing in mind that the participants in the proceedings and third parties have the right to access the files, except when the public is excluded, or the files are marked as a state or official secret, inadequate storage of medical documentation may certainly constitute a violation of the right to respect for the private life of the person whose documentation is included by the expert witness in the files. Therefore, it is obligatory that all medical documentation relating to a party or another participant in the proceedings, and which may be accessible to the participants in the proceedings and third parties, be submitted to the court in a sealed envelope, in order to ensure that the right to privacy is not jeopardized. The court will also have to take this into account. When preparing materials for providing findings and opinions, and in order to respect the right to private life and to preserve medical confidentiality, the court expert shall, in the medical institutions where he will obtain the necessary data, identify himself with the court decision appointing him as a court expert for a specific case (Simonović, 2004: 94).

2.3.2. Rights

The expert witness also has the right to receive a decision that must contain his name and surname, occupation, the subject of the dispute, to be precisely determined by him the subject and task of the expert examination - scope, as well as to indicate the deadline for submitting the findings and opinion in written form. The expert witness has the right to a reasonable deadline within which he can prepare his findings and opinion. In criminal proceedings, in addition to the obligations established by law regarding the task and content of the expert's findings, the expert witness also has the right to receive a written order, which will state in relation to which facts the expert examination is to be performed and to whom it is entrusted. If the expert witness receives a decision deciding on his rights and duties (especially a decision on punishment or a decision on compensation for damages), he has the right to a legal remedy against the court's decision. An appeal against the decision of the first-instance court that issued the decision is filed with the second-instance court, as an appeal. In the course of his work, the expert witness may be given clarifications in criminal cases. The expert witness always has the right to review the files. Furthermore, in criminal proceedings, an expert witness may propose that evidence be presented or objects and data be obtained that are important for providing findings and opinions. An expert witness has the right to compensation for travel

expenses and expenses for food and accommodation, compensation for lost earnings and costs of expert testimony, as well as the right to a reward for the expert testimony performed. The provision of costs for the payment of the aforementioned fees to the expert witness is determined in accordance with the legal nature of the court proceedings being conducted (Simonović, 2004: 103).

Criminal proceedings are conducted ex officio, therefore the costs of criminal proceedings include, among other things, the costs of expert witnesses. They are paid in advance from the funds of the body conducting the criminal proceedings, and are collected later from the persons who are obliged to compensate them, according to regulations. Bearing in mind that the court budget is not always adequately determined, expert witnesses who have provided findings and opinions often find themselves in a situation where they cannot exercise and realize their right to reimbursement of costs within a reasonable time, as well as the right to remuneration for the expert opinion performed. In such a situation, the expert witness has the right to request a decision determining the amount due to him based on the right to reimbursement of costs incurred in the process of providing findings and opinions of the expert witness, and the amount of remuneration for the expert opinion performed, as determined by the court. Such a court decision represents an enforceable title on the basis of which, in accordance with the relevant provisions of the law, the collection of claims against the state can be carried out in the enforcement procedure, with the designation of the body that is obliged to make the payment (Jokić, 2009: 188).

If an expert witness is not paid the costs and remuneration due to him according to the court's decision, for providing the expert's findings and opinion, the expert witness has the right to request from the court a decision determining the amount of certain compensation for costs and the amount of remuneration, which also constitutes an enforceable title.

2.4.Exemption of Experts

In practice, it happens that some of the reasons for which the impartiality of a specific expert may be doubted (subsequently learned), after he has already been appointed to be an expert. In this case, the parties can request the exemption of that expert by referring to the reasons provided for by law. These are situations in which the expert appointed by the court to be an expert in a specific case is in a conflict of interest and may give the impression that he will be personally interested in the outcome of the proceedings. For example, if he is in a marital, extramarital relationship or related to the defendant or injured party, if he is employed by them or is employed together with them or some of them by the same employer (Mrvić-Petrović, Ćirić, Počuča, 2015: 730).

Also, as a rule, an expert witness cannot be a witness in the same trial. For his part, the expert witness is obliged to present to the judge the reasons why he should be exempted from expert testimony in a specific case, as soon as he learns of such reasons. He should even point out those indirect reasons that could possibly influence his impartial judgment (for example, because of in-law relationship with the defendant or injured party, friendship, etc.), because when they learn of such reasons, the parties could request the expert's exemption or later challenge the expert's findings and opinion and the court verdict itself if it is based on the findings of the expert who had to be exempted (Mrvić-Petrović, Ćirić, Počuča, 2015: 731).

2.5. Expertise Management

In accordance with the principle of judicial management of the procedure, the court manages the expert examination by directly monitoring the work of the expert, asking the expert questions, seeking clarifications, drawing the expert's attention to certain circumstances, providing him with the necessary information about the course of the litigation and circumstances significant for the expert examination, giving the expert the opportunity to follow the main hearing, etc.

Experts are obliged to fulfill their obligations to the client responsibly, conscientiously, professionally and ethically, applying the principles of objectivity, impartiality and professional knowledge.

As for the manner and place of conducting expert testimony, expert testimony can be conducted in the presence of a judge/panel and outside the court building. Only those official actions that are required by law to resolve individual cases may be performed outside the court building. In this regard, the need to leave the court building to conduct expert testimony is decided by the panel, or rather the individual judge who is resolving the case. The president of the court and judges who perform official actions outside the court building should strive to prepare the arrangements in which court experts participate so that the same expert, when leaving, performs multiple expert testimony or other official actions at the same or similar time, in the same place or direction. If the subject of the expert testimony is secured, the expert testimony can also be performed in court. Most often, the expert witnesses perform expert testimony based on the instructions they received in the court decision ordering the expert testimony, after which they submit their findings and opinions to the court and the litigants (Čizmić, 2011: 475).

The court is not bound by the expert report or the expert's opinion, and it can, guided by the rules of logic, subject them to analysis and criticism.

The management of the expert examination is reflected, among other things, in showing the subject of the expert examination to the expert. The expert is bound by the instructions and requests of the court, because the court ordered the expert examination and he is well aware of the expert questions to which he is seeking answers. Therefore, there must be constant contact and cooperation between the court and the expert, because this enables the provision of additional instructions to the expert and guidelines for his work. The parties, their legal representatives and proxies may, upon the approval of the president of the panel, directly ask questions of the expert. If the court failed to conduct the expert examination, and especially if it failed to determine the subject and direction of the expert examination for the expert, it has committed a material violation of the provisions of criminal procedure. In addition to the material at its disposal, the expert often needs other information that is known to the court. In this regard, the expert may be given explanations, and he may be granted the opportunity to review the file, on which the final decision is made by the court. In practice, the expert is always given the file for review because the expert examination decision usually does not contain sufficient information about the subject of the dispute. In addition, access to the file is of particular importance when the findings and opinions cannot be given on the basis of an examination of the items or the scene, because the items and traces no longer exist, but can only be done on the basis of written evidence, witness or party statements, which are in the file. For

the same reason, the expert is also authorized to ask the parties questions, and thus the parties are obliged to provide the expert with the necessary clarifications. If the case requires the expertise of two or more experts from different fields, they may request clarifications from each other necessary for the preparation of their findings and opinions (Kulenović, 2005: 288).

The expert may explain to the court the expediency of conducting an expert examination outside of what has been ordered, but the final decision on this is made by the court. Thus, at the request of the expert, new evidence may be presented in order to establish circumstances that are important for forming the expert's opinion. For example, the expert may propose the presentation of evidence by obtaining objects in order to establish circumstances that are important for forming the expert's opinion, and may also attend the on-site inspection[3].

2.6. Multidisciplinary Expertise in the Procedure

Often in criminal proceedings, experts play a key role in determining the damage to health that caused physical pain, fear, the percentage of reduced life activity, disfigurement, etc. In addition, there are complex expert assessments of fires, electrical installations, large explosives, etc. In these proceedings, it is necessary to consider legal, medical and every other aspect, i.e. a multidisciplinary approach is necessary. This indicates the necessary and closer cooperation between the judge and the medical expert, always bearing in mind that the judge is dominus litis (Čizmić, 2011: 479).

In the case of expert medical reports, resolving numerous problems, including in the fields of law and medicine, necessarily requires a multidisciplinary approach and specialization. In this sense, it would be useful for both the court and the attorneys in criminal proceedings to improve and acquire special professional knowledge in those areas of science that are most necessary within a particular specialization, namely judges in the field of medicine, and medical experts in the field of law.

The highest level of expertise is “complex” multidisciplinary expertise. This expertise is performed in cases where all partial expertises that differ from each other are collected and when it is necessary to check and harmonize all previous versions of the findings-opinions of individual experts in a single report. The essence of “complex” expertise is to unify all previous findings and conclusions into a single Expertise Report, whether it is a matter of multiple expertises of individual experts or, even more complexly, when it is a matter of multiple “multidisciplinary” expertises, where each expert, in accordance with his/her professional and technical knowledge, provides his/her own findings that need to be incorporated into a common-unified conclusion. This otherwise very complex type of expertise contributes greatly to establishing the material truth, facilitates interpretation for the court, and also contributes to the efficiency of the court in conducting and concluding the hearing and making a decision (Vidić, 2015: 2).

[3] The function of experts is of dual importance. Namely, when they inform the court of their findings (observations), they represent a classic means of evidence. However, if, with their expertise, they help the court draw conclusions, or form an opinion on what has been observed, they perform the function of a specific assistant in performing the function of the trial in establishing the factual situation.

3. Summary and Conclusion

It is undeniable that expert opinions in criminal proceedings have a special importance and that crucial issues of evidentiary proceedings cannot usually be resolved in any other way than by expert opinions. It is also evident that part of these expectations constantly remains unfulfilled, because expert opinions appear to be the most common reason for the length of time and inefficiency of criminal proceedings, which is why it is necessary, within the framework of measures needed to increase the efficiency of criminal proceedings, to specifically consider both procedural and general organizational issues of expert opinions. The possibilities of certain scientific fields remain unused in determining the relevant disputed factual situation in criminal proceedings due to inadequate criteria for assessing the necessary expertise of experts, poor organization of court expert opinions, the subsequent inactivity of competent entities in preparing and managing expert opinions, the lack of certain procedural solutions or the absence of appropriate procedural possibilities. The survival of the new practice of private expert opinions despite the absence of normative conditions for this, indicates a great need in criminal procedure for more efficient expert opinions.

In terms of procedure, it is necessary to create conditions for the direct assessment of this evidence, while strengthening the elements of contradiction in the consideration of the conducted expert examination and the given findings and opinions, along with clearly defined (and respected) rights and obligations and deadlines, to ensure optimal conditions for a reliable assessment and evidentiary evaluation of the expert conclusion in a reasonable, and for an efficient procedure, acceptable, time.

It should be borne in mind that modern crime, significantly "supported" by globalization trends, requires efficient cooperation between the authorities of national judicial systems, and this cooperation is based not only on the formal harmonization of law, but also on the standardization of evidentiary procedures, which should ensure high quality and the possibility of reliably using evidence obtained in various national judicial procedures.

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