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THE IMPORTANCE OF THE PARTICIPATION OF THE MEDICAL EXPERT IN CRIMINAL PROCEEDINGS

Zoltán Szilvássy*
PhD student (University of Debrecen)

Abstract

The Criminal Procedure Act significantly changed the rules of expert evidence, so e.g. in order to prevent the prolongation of the procedures, it attempts to direct the process of appointing experts and evaluating expert opinions into a reasonable channel in order to make a considered and timely decision. The time that has passed since the entry into force of the law already allows us to examine the practice of law enforcement. I believe that the biggest change comes from the regulation of the private expert opinion, which allows the defendant and his defense to have equalrights in the criminal proceedings, which also follow from the principle of equality of arms. And all of this strengthens the fairness of the procedure in general, which can be a guarantee of the birth of judicial verdicts that are also close to the material truth.

Keywords: medical expert, evidence, criminal proceedings practice of law enforcement, principle of equality of arms

1. Introduction

One of the fundamental tasks of the criminal procedure is to establish the facts of the case and to clarify the facts and circumstances necessary for a well-founded prosecution. Evidence procedure plays an important role in this process, the purpose of which is to establish the truth through the assessment of the pieces of evidence. The assessment of the pieces of evidence is a less spectacular stage of the criminal case compared to the initiation of the procedure, the establishment of the identity of the perpetrator, the indictment, the judicial hearing or even the sentencing. However, there is no doubt that the assessment of the pieces of evidence is an important element

* ORCID: https://orcid.org/0009-0001-2309-5044

of evidence. This is indicated, for example, by the fact that the Hungarian Criminal Procedure Act includes the principle of freedom of assessment among the general rules of evidence[1]. During the assessment, the legal practitioner must be convinced of the truth or falsity of the evidence used to establish the facts in criminal cases. This is a complex task, the resolution of which, in addition to the legal rules of evidence, also requires knowledge from other scientific fields.[2] Of these, the importance of expertise in forensics, psychology and, not the least, logic, or knowledge of certain physical, chemical, biological, and psychiatric issues that occur in criminal cases should be emphasized. Knowledge of the rules and recommendations relevant for assessment is required not just from the legal practitioner performing the evidence. This is also advantageous for lawyers who perform defense or representational duties.[3]
During the criminal proceedings, a lengthy and multifaceted process of discovery takes place. At the beginning of the procedure, more or less circumstances may indicate that a crime has been committed. Starting out from here, the amount of information, the available to the acting authorities increases, until, , all essential circumstances that can be discovered regarding the crime committed and the criminal liability of the perpetrator become known in the final stage of the criminal proceedings Therefore, the discovery process that takes place during the criminal proceedings goes from not knowing, through the more or less incomplete knowledge of the facts to the clarification of essential circumstances related to the crime.[4]

2. About Forensic Medicine Experts

Forensic expert activity may be performed by a natural person authorized to do so, or by a forensic expert institution established for this purpose. A forensic expert can be someone who has no criminal record, has a higher qualification in his field of expertise and at least five years of professional experience, is a member of the chamber of forensic experts relevant for his/her place of residence and is listed in the official register of experts maintained by the Ministry of Justice, that contains the name and field of expertise of the experts. The expert may only carry out expert activities in the field indicated as his field of expertise in the register. The 'backbone' of the domestic expert organization system is formed by the expert institutions and offices that the Minister of Justice or, in agreement with them, another minister or the head of an organization with national competence can establish. The majority of official assignments are carried out by the so-called permanent experts of these institutions.

Traditionally, there is an institutional 'predominance' in certain areas of expertise in domestic procedures, which is the result of a legislative decision. In fact, there are specialized issues defined by law where only institutions are authorized to act, given

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1 Act XC of 2017 on the Criminal Procedure – hereinafter referred to as: 'CPA' – § 167.

2 Géza Katona: *Valós vagy valótlan? Értékelés a büntetőperbeli bizonyításban* [Real or unreal? Evaluation in criminal procedural evidence]. Budapest, Közigazgatási és Jogi Könyvkiadó, 1990. 15.

3 Katona op. cit. 16.

4 Katona op. cit. 17.

that the material and personal conditions of the necessary special examinations are only guaranteed here. If a permanent or designated expert is not available in the given field, the authority employs a so-called casual expert, i.e. asks a natural person or institution to prepare the expert opinion who has or may have the appropriate expertise.[5]

The CPA takes into account the fact that there are forensic experts included in the register of forensic experts, as well as that there are state bodies, institutions, and organizations not included in the register that are entitled to perform expert activity by specific legislation.

3. Certain Innovations of the CPA in the Field of Expert Evidence

The CPA introduced several general innovations for experts. As an example, it can be mentioned that the regulation applied to certain institutions as special treatment can also be applied to the expert in the cases specified therein[6]. It also became clear that the expert participates in the criminal proceedings as another interested party in connection with the procedural act where he/she is involved (summons, notification, presence, presence at the place of the procedure, participation) or decision (fee, reimbursement of expenses), and his/her rights and obligations are established accordingly[7].

It is also worth highlighting that, unlike the solution of previous procedural laws, one of the general aspects of the regulation of expert evidence in the CPA is that it omits the so-called procedurally neutral provisions, that apply to all procedural laws and that can be found in the Act on Forensic Experts. For example, the contents of the assignment of the expert, the parts of the expert opinion, the obligation of the expert to report are not regulated by the CPA.

The CPA does not differ from the provisions of the previous procedural law with regard to the main rules for the exclusion of an expert, however, it makes a clarifying addition in Section 191 (1) point b) of the CPA when it comes to the process of a member of the investigating authority acting as an expert. In the absence of a stipulation to the contrary, the exclusion rules also apply to the expert commissioned to prepare the private expert opinion. It is essential that both the defendant or defense attorney who commissioned the preparation of the opinion, as well as the appointed expert must pay attention to this, because in the absence of this, the document cannot be regarded, not just as an expert opinion, but even as a documentary evidence or an observation.

Judicial practice requires serious reasons for the exclusion of experts. This comes from the strict liability system that guarantees the legal status of experts.[8]

However, according to judicial practice, it is a fundamental requirement for experts to act impartially and without bias when deciding questions that require special

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5 Miklós Angyal: *Igazságügyi orvostan a büntetőjogi gyakorlatban* [Forensic medicine in criminal practice]. Pécs, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, 2001. 3.

6 § 96 of the CPA.

7 § 58 of the CPA.

8 Balázs Elek: A büntetőügyekben eljáró szakértők felelősségének rendszere [The system of responsibility of experts acting in criminal cases]. *Büntetőjogi Szemle* 11, 1. (2022), 49.

expertise during criminal proceedings. According to the court's decision, however, in the event that the expert's opinion served as the basis for the initiation of criminal proceedings, it does not in itself establish the bias of the experts, even if, based on it, the liquidator reported a crime in compliance with his legal obligation, that also served as the basis for the initiation of criminal proceedings. In the case, the liquidator reported a crime based on the expert opinion he obtained during his proceedings, after which the county prosecutor service filed charges for the crime of embezzlement and other crimes committed as a continuous criminal offence on a particularly considerable value. Pursuant to § 33 (4) of the Act XLIX of 1991 on bankruptcy and liquidation proceedings, the liquidator is obliged to notify the competent authority in writing of the crime he became aware of, and if the perpetrator is known, also specifying her/him. As a result, the liquidator fulfilled his/her obligation prescribed by law when reported the crime that was indicated based on the data that was acquired during the liquidation procedure bas Therefore, the impartiality of the experts cannot be called into question based on the mere fact that they prepared an expert opinion during the liquidation procedure, that later served as the basis for the indictment.[9] In view of all this, the court rejected the motion to disqualify the expert[10].

In the cited case, the fact that the decision was made in the second-instance illustrates that pursuant to the CPA, the constitutional right to appeal that is guaranteed in the Hungarian Fundamental Law is also provided against the decision on the exclusion of the expert. Of course, the exclusion rules also apply to party-appointed experts. Otherwise, if the opinion of a party-appointed expert is not recognized as an expert opinion in the procedure, there is neither a need nor a legal possibility to exclude the appointed expert from the proceedings.[11]

4. Party-appointed Experts

In my opinion, in the area of expert evidence, viewed separately from other rules, the biggest innovation of the CPA is the introduction of the party-appointed experts. In order to strengthen the right to defense and more effectively enforce the principle of equality of arms, the CPA enables the defendant and the defense attorney to obtain an opinion from an expert appointed by them, that is based on their assignment. The rules of the party-appointed (private) expert opinion are partially contained in the act on criminal procedure and partly in the act on judicial experts. The ministerial justification of the CPA also indicates that the basis of the regulation on party-appointed expert opinions was that the defense should be able to appoint an expert commissioned by itself against

9 CPA para. h) of § 103 (1).

10 Debrecen Regional Court of Appeals, Beüf.II.263/2018.

11 Marianna Csilla Idzigné Dr. Novák: *A szakértő státusváltozása a hazai büntetőeljárásban – különös tekintettel a kizárásra vonatkozó szabályokra* [The change of status of the expert in domestic criminal proceedings - with particular regard to the rules on exclusion]. PhD thesis, Győr, Széchenyi István Egyetem, 2018. 270. https://tinyurl.com/wfzh6yjz (4 April 2022).

the expert assigned by the prosecution, and that it should be possible to appoint an expert even if, despite the submission of a motion, an expert is not appointed at all.

The preparation of a party-appointed expert's opinion can essentially be commissioned if the court, the prosecution or the investigation authority reject the motion of the defendant and/or the defense to appoint an expert, and thus an expert opinion by an appointed expert has not yet been prepared, or if the prosecutor or the investigating authority did not appoint the expert indicated in the defendant's or the defense's motion. At the same time, if a motion by the defendant or the defence counsel is aimed at establishing or assessing a fact, that was already established or assessed by an expert in an opinion provided by an expert appointed by the prosecution or the investigating authority, then a party-appointed expert may be mandated to provide an opinion only if a motion filed by the defendant or the defence counsel to provide clarification or to supplement the expert opinion or to appoint a new expert was dismissed either before or after the indictment.

It should be emphasized that there are two further limitations to obtaining a party-appointed expert opinion: if the previous expert opinion was prepared either before or after the indictment by the expert named in the motion of the defendant or the defence counsel, then a party-appointed expert opinion cannot be commissioned. Furthermore, the defendant and the defense counsel can only commission one private expert opinion on the same specific issue

Violation of the relevant legal regulations means that the opinion of a party-appointed expert cannot be taken into account as evidence, but only as an observation.

In the legal literature, the opinion has emerged that for the evaluation of a party-appointed expert opinion, that is (later) qualified as an expert opinion, the provisions regarding the expert opinion by a tribunal/authority appointed expert should be applied with the exception, that since there is no legal relationship between the authorities acting in criminal proceedings and the party-appointed expert, and that the act establishes the procedural obligation of the expert for the authorities as provided in the official assignment itself, in accordance with this, the expert opinion of a party appointed expert can be supplemented or the expert can be heard in parallel based on the amendment of the mandate of the expert for this purpose. If an opinion by a party-appointed expert qualifies as an expert opinion and is submitted orally, or if a clarification is provided, the expert opinion is supplemented orally, or experts are heard paralelly on the basis of a mandate, the expert shall be obliged to also answer questions asked by the court, the prosecution service, or the investigating authority. The expert fee and costs of a party-appointed expert mandated to provide an opinion shall, of course, be advanced by the defendant or the defence counsel. If it qualifies as an expert opinion, in that case the authority concluding the procedure will decide on the bearing of the costs based on the provisions on criminal costs.[12] However, judicial practice shows that the decisive demarcation in such cases is what the assignment of a

[12] Erik Mezőlaki: A büntető eljárásjogról igazságügyi szakértőknek. In: Zsuzsa Szakály (ed.): *Igazságügyi szakértők első jogi képzése* [First legal training for forensic experts]. Budapest, Magyar Közlöny Lap- és Könyvkiadó Kft., 2021. 112.

party-appointed expert actually covers, so it can be supplemented by assignments for individual activities if necessary.

Analyzing the application of the rules on party appointed expert evidence, it can be established that a different approach to the rules of the previous procedural law is also needed in criminal proceedings. Examining the trial history of the criminal case published in the Cases of the Courts of Appeal [Ítélőtáblai Határozatok] it can be established that in the given case, during the investigation, the defense counsel of the accused formulated a detailed motion for evidence after the CPA already entered into force, in which he made a motion to supplement the completed forensic expert opinion, as well as to appoint a new forensic accountant.[13]

In this submission, he repeated his motion for evidence that he had already submitted previously, and to which neither the investigation authority nor the prosecution had responded until that time. The defense submitted a motion to supplement the expert opinion of the forensic expert based on Section 197 of the CPA, and to assign another expert based on Section 197 (2) of the CPA. A detailed reasoning was given regarding the concerns about and shortcomings of the expert opinion. However, the investigating authority informed the defense counsel in its transcript that it does not consider the evidentiary motion to supplement the forensic accountant expert's opinion or the assignment of a new forensic accounting expert to be justified, and the same is true the supplementation of the expert opinion. After the indictment, the county prosecutor service also forwarded to the court the expert's opinion attached by the defense and prepared after informing the investigation authority. In any case, it was not mentioned in this transcript, nor in the justification of subsequent prosecutorial appeals, that the assignment given by the defense attorney to prepare the expert opinion would not be in accordance with the procedural law. Neither did it arise at the time of sending these documents that the legally prepared private expert opinion could not be used as evidence in the proceedings for any reason. At the preparatory meeting held in the case, the prosecutor, taking into account the private expert's opinion prepared on the basis of the defendants' commission, requested to supplement the expert evidence, that is, the prosecution requested to send the newly acquired 'document' with their observations to the expert who acted as an expert in the investigation phase, on it, if necessary, to supplement the opinion.

The prosecutor service did not present any other motions for evidence at the preparatory meeting. After that, a parallel hearing of the expert that was assigned by the investigating authority by the request of the defense took place at the court. The chair of the judicial panel informed those who were present that the opinion of the party-appointed expert had been forwarded to the previously assigned expert, and accordingly, prior to the parallel hearing, the assigned expert was already able to state that he would like to amend his expert opinion based on another expert opinion sent to him with the motion of the prosecutor. In fact, the parallel hearing began with the expert appointed during the investigation amending his opinion, and then, as a result of the parallel hearing, he amended it on additional issues as well. The court of appeal

[13] Debrecen Regional Court of Appeal, Bf.II.286/2022/13.

found that the decision of the court of first instance regarding the qualification of the party-appointed expert's opinion as an expert opinion in the procedure was justified, and that the based on Chapter XXXI of the CPA, and the procedure of expert evidence was in accordance with the law. The assignment of a party-appointed expert opinion in the case was legal, so its use as evidence was also legal.

The argument of the prosecutor service, claiming that the experts who gave the opposite opinion and were legally involved in the proceedings, thus could not have been heard in parallel was wrong, given that the originally appointed expert did not provide information in advance about the concerns expressed in the party-appointed expert's opinion, neither was the opinion supplemented. Although this did not affect the legality of the assignment given to the private expert, it can be established that already prior to the parallel hearing of the experts, the originally assigned expert had modified and changed his previously submitted expert opinion, having entered the proceedings on the basis of a legal assignment based on a party-appointed expert's opinion. According to the panel of the court of appeals, the provision of the prosecution's appeal that such a procedure of experts giving private expert opinions could not have taken place cannot be accepted. According to the clear wording of the Chapter XXXI of the CPA, as well as the clear explanation of the ministerial justification of the Criminal Procedure Act, the procedural conditions for commissioning a private expert opinion were created precisely for the purpose of more consistently enforcing the division of functions and strengthening the equality of weapons. There is no doubt that in criminal proceedings, officially appointed experts have the priority for giving an opinion on a professional matter. The institution of a party-appointed expert is a supplementary guarantee associated with the right of defense and the equality of arms. That is why § 189 of the Act on Criminal Procedure created the system that in the motion to appoint another expert, the reason for the concern that arose in relation to the previous expert opinion must be indicated, if the motion is aimed at the expert's establishment or assessment of a fact that was already examined by a previous expert opinion in the criminal procedure. It was not argued by the prosecution either that this condition was met by the defense attorney before the party appointed expert was given the mandate. Chapter XXXI of the CPA., as well as its ministerial justification, leaves no doubt that an expert can be included in the procedure not only by official appointment, but also on the basis of a mandate, and, with minor differences, the same rules apply to the forensic expert involved as an expert in the procedure on the basis of an official assignment as to an expert that was appointed by party in the form of a mandate whose opinion later qualifies officially in the court. As a general rule, an expert may act on the basis of a on official assignment, however, in order to ensure the equality of arms, the law compensates for this limitation[14]. The preparation of a party-appointed expert's opinion may take place on the basis of the mandate of the defendant or the defense counsel, the additional rules of which are contained in the Law on Forensic Experts. The basis of the regulation of the party-appointed expert opinion is that, on the one hand, the defense should be able to produce the expert commissioned by itself against the expert assigned

[14] Legislative justification for CPA § 190.

by the prosecution, and on the other hand, it should be possible to commission the expert even if, despite his motion, no expert is appointed at all. Although the procedural law has been partially amended since its entry into force, an order for the preparation of a private expert opinion can be given based on precisely defined rules in the system established by the law. The motion of the defendant's counsel met the conditions set forth in Section 190 of the CPA.

The investigating authority remained silent on the motion for a longer period of time, and then rejected it. After this decision, a mandate was given to the party-appointed expert to prepare the opinion. So the assignment was not premature. Further legal limitations for obtaining a private expert's opinion could not be established either, because the previous expert's opinion was not prepared by the defendant or the expert named in the defense's motion, either before or after the indictment. At the same time, on the same professional issue, the defendant and the defense attorney can only commission a private expert opinion. The law wants to make it clear that the defendant and the defense attorney have the right to appoint a private expert, but they can only do so if the conditions specified in the law are met, and the defense attorney's appointment met these conditions. However, jurisprudence cannot create additional limitations. The expert can be included in the procedure not only by official assignment, but as an exception, also by a party's mandate to provide an expert opinion. In such a case, the same rules, with minor differences, apply to a party-appointed expert legally included in the procedure as to a person acting as an expert on the basis of official assignment. The parallel hearing of the expert was also not hindered by the lack of an official assignment of the expert giving the opinion, because Section 198 (2) of the CPA makes it clear that parallel hearings are possible based on the expert's mandate and not only on the basis of an official assignment. The expert participating in the parallel hearing did not raise any procedural objections that the power of the mandate received from the defense attorney would not extend the parallel hearing. For the preparation of the party appointed expert's opinion, the appointed expert and its procedure provisions of the chapter XXXI of the CPA are applicable, added, that the act itself refers to the differing regulations in each subchapters.[15] To sum up, the court of first instance obtained the relevant pieces of evidence necessary to establish the facts, it legally decided on the use of certain means of evidence, including the opinion of the party appointed expert, so there was no obstacle to uphold the first-instance judgment based on the facts established by the court of appeal in the second-instance proceedings[16].

5. Examinations Related to Medical Expert Activity in the Investigation

Even with the change in the procedural framework, the tasks related to forensic experts and their work do not change, only with the development of the science can the work method and protocol change, which inevitably affects the expert work based on it. In

[15] Section § 164, Section § 189, Section § 190 (1) (2) and (3), Section § 197 (2), Section § 198, §, Section § 520 (1), (2) and (3).

[16] Debreceni Regional Court of Appeals, Bf.II.286/2022/13.

such cases, the question naturally arises as to how much more disadvantaged the expert acting on the basis of a commission of a private mandate is in comparison to the expert appointed officially by the authorities.

Pursuant to the regulations of the CPA on expert examination, there had not been any significant changes introduced compared to the provisions of the previous procedural code. The detailed rules are not contained in the CPA, but in the Law on Forensic Experts and the individual sectoral legislation. However, the basis for preparing a private expert opinion is a generally speaking, a private legal relationship. This is why the CPA provides regulations for the party appointed expert's investigation and the priority of fulfilling the assignment[17].

6. Forensic Medical Examination of Physical Evidence

During the commission of the crime, various biological and non-biological physical pieces of evidence are created, which can be characteristic of the person of the perpetrator as well as the method of committing the crime. By objectively establishing the manner of the crime, forensic investigations provide data that is crucial evidence for the justice system.[18]

The court, the prosecution service, or the investigating authority may order and carry out an inspection if a person, object, or site needs to be inspected, or an object or location needs to be observed, to discover or establish a fact to be proven.[19]

Highlighting from the regulations on inspection, 'on-site inspection' is decisively needed when and if a fact significant from an investigative point of view can be proven by examining a specific location[20]. The observation and investigation of the scene of the crime provides most of the data regarding the commission of many crimes, especially those against life, bodily integrity, and health. Due to the nature of the crime, it comes to the attention of the authorities after it has been committed, so the investigation has to recall the act from the past. This activity is the on-site inspection, which is an investigative act bound by procedural formalities. The inspection committee of the investigating authority conducts the on-site inspection. The participation of a forensic medical expert is also required during the on-site inspection of crimes against life. The on-site inspection has a precisely defined sequence and rules. The professional investigation is absolutely important from the point of view of detecting the crime and establishing the identity of the perpetrator.[21]

From a medical expert's point of view, an inspection sometimes means nothing more than the examination of a living person or a dead body or various objects. When the medical expert examines, for example, the victim or the suspect in a case, in the legal

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17 Ministerial justification of Act XC of 2017 on criminal procedure.

18 László Buris – Éva Keller: Kriminalisztikai vizsgálatok. In: Péter Sótonyi (ed.): *Igazságügyi orvostan* [Forensic medicine]. Budapest, Semmelweis Kiadó, 2005. 337.

19 Article 207 of the Criminal Code.

20 See § 207 of the Criminal Code.

21 Buris – Keller op. cit. 337–338.

sense, an inspection is conducted. The same situation occurs for example in the case of an autopsy, when the subject of the inspection is the corpse, and the inspection is essentially the same act as the autopsy activity. The practicing physician - as a medical expert - must examine almost exclusively living persons, other examinations are usually the responsibility of professional experts. A medical examination of living persons is usually required for the purpose of medical examination of injuries, illnesses, and intoxication. Based on the inspection (examination), the expert has the opportunity to present his/her expert opinion.[22]

Occasionally, the police ask the expert for an opinion on the injury, state of health, and intoxication based on the investigative documents, such as obtained medical reports, X-rays, hospital final reports, and interrogation reports. The purpose of the inspection, the examination, the autopsy, the study of the documents, and the participation in the procedural act is that the expert can give a well-founded opinion on the given professional issue. The expert opinion is actually a summary of the professional conclusions drawn from the medical records, the discovered facts and the available data. It must answer the questions raised by the appointing authority, and in order to be complete, it is also necessary for the expert to point out circumstances and facts that are relevant to the case, but escaped the attention of the authority or that could not have been thought of due to the lack of appropriate expertise.[23]

An important condition for the effectiveness of examinations is that pieces of evidence and test materials are examined under appropriate conditions. Their effectiveness is not primarily decided in the laboratory, because the material sent for testing is analyzed there. According to Sótonyi, the basics for a successful examination are the following:

The professional search for pieces of evidence takes place within the framework of the on-site inspection. It is the primary task of the medical expert and criminal technician present at the scene is to search for all the signs and traces of crime, from which it is possible to infer the details of the course of the crime, the activities of the perpetrator on the scene, or the perpetrator himself.[24]

In case of crimes committed on a location, it is crucial to secure the scene professionally in order to preserve the pieces of evidence of the crime. If this is not done, there is a risk that external persons change, destroy the pieces of evidence created or left by the perpetrator at the scene, or create misleading traces that are not related to the commission of the crime.[25]

In connection with the professional packaging of pieces of evidence, it should be emphasized that the result of the forensic investigation to be carried out depends, among other things, on the condition in which the pieces of evidence are analyzed. The professional packaging of individual pieces of evidence and objects is a requirement

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22 Endre Barta – József Nagy: *Az igazságügyi orvosszakértőkről* [Forensic medical experts]. Budapest, Rendőrtiszti Főiskola, 2001. 21–22.

23 Barta – Nagy op. cit. 22.

24 Buris – Keller op. cit. 338.

25 Ibid. 338.

that must be guaranteed by the medical examiner, the crime technician, and the investigator working on the scene.[26]

The forensic medical laboratory tests are primarily authorized by the Hungarian Institute of Forensic Sciences of the National Police Headquarters, the National Institute of Forensic Toxicology under the organization of the Ministry of Justice and the Forensic Medicine Institutes of the universities, however, it may be necessary to use other specific institutions, such as in the case of examination of non-medically related evidences.[27]

The data required for the examination must be provided. The primary condition for a successful laboratory test is that there is adequate data available for the material sent for testing, as well as the questions to which the authority requests answers during the expert examination.[28]

One of the most important elements of physical evidence is the laboratory forensic examination, the result of which can be the following: establishing a fact, proof (positive or negative), identification, and exclusion.[29]

The examination of evidence by an expert is in itself an important element of criminal proceedings, and within that, the assessment of the pieces of evidence. An important principle of expert examination is the minimal use of original evidence, keeping track of changes, observing the rules of evidence, and not crossing the limits of one's own knowledge (not even on the part of the expert).

Upon completion of the expert examination, the expert will hand over both the pieces of evidence and the evidence extracted from them to the office appointed her/him.[30] In the absence of this, concerns may arise regarding the credibility of the expert opinion, which may ultimately lead to the failure of the entire evidence procedure.

7. Forensic Medical Expert Opinions in Court Practice

It is a general requirement for medical expert opinions that the expert opinion shall be justified, true, clear and objective. The opinion is justified if it is based on the facts described in the medical records and is based solely on the conclusions drawn from them. It is true, if its conclusions are professional and correspond to the current state of medicine. It is clear if it summarizes the professional findings concisely, to the point and in a comprehensible manner. It is objective, if it is free from bias and only contains objective professional statements.[31]

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[26] Ibid. 338.

[27] Ibid. 338.

[28] Ibid. 338.

[29] Ibid. 339.

[30] István Zsolt Máté: A bizonyítékok kezelése. Az igazságügyi informatikai szakértő a büntetőeljárásban. [Handling of evidence. The forensic IT expert in criminal proceedings]. *Magyar Rendészet* 14, 2. (2014), 36. https://folyoirat.ludovika.hu/index.php/magyrend/article/view/3981/3247 (Accessed on 4 April 2022).

[31] Barta – Nagy op. cit. 22.

A definite opinion can be given if there can be only a single reason for an established fact as a consequence with natural scientific certainty. It is characteristic of a probability opinion that such an opinion can be given in the majority of cases, since a fact can rarely be definitively traced back to a single reason. Something can be probable, very probable, probable to the point of certainty, or improbable. An inconclusive opinion can be made if the inadequacy or insufficiency of the test material does not allow a definite conclusion or probable conclusion to be drawn.

It is also worth pointing out that the nature of the expert's tasks can sometimes change due to changes in the legal environment. In an ongoing case due to the crime of drug-related crime, which was judged at second instance by the higher court, the panel pointed out that the first instance court legally concluded that the defendant was guilty, but the classification of the act did not comply with substantive law. The reason for this is that the court overlooked the § 2 of the Criminal Code (Act C of 2012). According to Section 2 (1) of the Criminal Code criminal offenses shall be adjudicated under the criminal law in effect at the time when they were committed. Paragraph (2), however, stipulates that if an act is no longer treated as a criminal offense, or if it draws a more lenient penalty under the new criminal law in effect at the time when it is adjudicated, this new law shall apply. In the judgment of the first-instance court, it was found that in the case of the drug ADB-FUBINACA, § 461 of the Criminal Code does not quantify the upper limit of the small quantity, its determination is the competence of the medical expert. Based on an expert opinion, the forensic doctor established that the amount of the active substance exceeded not only the lower limit of the substantial quantity, but also of the particularly substantial quantity (1400 mg). In contrast, pursuant to Section 341 (3) of the Act CXCVII of 2017 Section 461 paragraph (1) of the Criminal Code was supplemented with subparagraph (d) and (db) on January 1, 2018. According to this, in the case of ADB-FUBINACA, the upper limit of the small quantity is 0.05 grams. Thus, in the case of this drug, the calculation of the quantitative limits can no longer be considered with the involvement of a medical expert pursuant to § 461 (4) of the Criminal Code, the classification of the act shall be based on subparagraph § 461 (3) a) and b). Concludingly, the drug is of a particularly substantial quantity if it exceeds two hundred times the upper limit of the small amount defined for the given drug. Accordingly, in the case of the so-called ADB-FUBINACA, the lower limit of the particularly significant amount is 10 grams, which in the present case does not reach, neither in the case most favorable for the accused – 1900 mg – nor the maximum estimated amount of the active ingredient – 9400 mg. Based on the content of the active substance, the drug seized from the accused was a substantial quantity, as it exceeded twenty times the upper limit of the small amount.

Therefore, the crime charged against defendant was possession of a significant quantity of drugs as defined in Section § 178 (1) and classified according to § 178 (2) b) of the Criminal Code. Overall, it can be concluded that in the case of some drugs, that the calculation of the quantitative limits can no longer be assessed with the involvement of a medical expert, if the quantity limits stipulated in the effective Criminal Code for the pure active substance content given in the base form are more favorable to the perpetrator at the time of assessment. The change in the legal environment and the omission of an unnecessary medical expert's opinion could thus be the basis for

the application of the more favorable penal code at the time of assessment and the imposition of punishment in the given case.[32]

The expert opinion must reflect the objective truth and, according to its purpose, must be suitable for the acting authority to learn this truth.[33] Such a substantive interpretation of the conceptual system related to expert activity makes it obvious that the expert opinion can be considered a special kind of evidence that cannot be easily integrated into the dual (personal and material) system of the pieces of evidence. The expert opinion can be considered primarily, but not exclusively, of a personal nature, since it is created by a human subject just like the testimony of the witness and the defendant. At the same time, it differs from these, because the objective source of expert activity, the subject of the investigation, is made available to the expert by the acting authority. This also means that, on the one hand, it depends on the decision of the acting authority which object it sends for examination, and on the other hand, these can only be objects that meet the requirements of procedural law.[34]

Within the activity of the expert, the creation of the expert opinion as a means of evidence can be considered a central moment. The ultimate goal of the legal practitioner's assessment of expert evidence is to determine the probative value of the evidence presented in the expert opinion. The realization of this represents the final result of an evaluation process which, starting from the establishment of the expert's competence and the credibility of the means of evidence provided to the expert, continues through the consideration of the credibility of the expert opinion as evidence. From the point of view of criminal procedure law, a distinction can be made between the expert opinions of the primarily assigned expert, the experts assigned to repeat the investigation, and the expert who performed the review. According to the number of specialized areas included in the investigation, one can distinguish between homogeneous and combined (complex) expert opinions.[35]

8. Evaluation of the Forensic Expert Opinion

In order to prevent the procedures from being prolonged, the CPA strives to set reasonable limits on the evaluation of expert opinions by establishing a sequence for the evaluation of the expert opinion. The expert opinion cannot be accepted without concern, for example, if it does not contain the legally required content elements of the expert opinion, if it is not clear, if it contradicts itself or the data provided to the expert, or if there is serious doubt about its correctness[36]. In these cases, at the request of the court, the prosecutor service, or the investigation authority, the expert provides additional information or amend the expert opinion.

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32 Debrecen Regional Court of Appeals, Bf.II.471/2019.

33 Barta – Nagy op. cit. 22–23.

34 Katona op. cit. 302.

35 Katona op. cit. 316.

36 CPA § 197.

If the first correction was not successful, another expert can be appointed, however, in the motion for appointment and in the appointing decision, the concerns regarding the acceptability of the expert opinion must be indicated. The ministerial justification of the CPA also mentions that, as a third step, if the opinions of the experts differ from each other, the discrepancy can be clarified by hearing the experts in the presence of each other.[37]

In criminal proceedings, it may lead to an error in the establishment of facts if the court fails to clarify conflicting expert opinions through a personal hearing of the experts, or if the court does not resolve the contradictions between the opinion of the expert assigned by the court and in individual expert's opinions attached by the parties.

It sometimes happens that the judgment of the court is unfounded with regards to the mental state of the accused - that is, in terms of his judgment at the time of the commission of the offense and his state at the time of the judgment. In such cases, even if the authority obtains several expert opinions to assess the defendant's state of mind, it still happens that, based on the expert opinions and the amending opinions, the state the first-class defendant at the time of the commission of the offense or at the time of the assessment is still not clear. Related to this, it also happens that expert opinions have contradictory findings. Therefore, in such cases, by hearing the experts, it must be clarified whether the state of mind of the defendant at the time of the commission of the crime or afterwards affected his mental state. It is a procedural error if the court does not summon the forensic psychiatric experts who presented conflicting expert opinions regarding the defendant's ability to account for the hearing, but merely notifies them of the deadline for the hearing, and establishes the facts in this regard based on the evaluation of the testimonies read at the trial.

If, for example, the defendant's 'latent schizophrenia' existing at the time of the commission of the act did not affect his state of mind, i.e. did not preclude recognition of the danger of the act to society, the circumstance excluding criminality contained in the Criminal Code cannot be applied. If it could be determined that the defendant's state of mind at the time the act was judged did not yet exist at the time of the act, but this could already be established with complete certainty at the time the act was judged, the criminal proceedings should have been suspended until the defendant recovered.[38]

9. Final Thoughts

The CPA significantly changed the rules of expert evidence, so for example, in order to prevent the procedures from being prolonged, it strives to lead the process of appointing experts and evaluating expert opinions into a rational channel for a considered and timely decision. The time that has passed since the act entered into force already allows us to examine the legal practice. I believe that the biggest change comes from the regulations on the party-appointed expert opinions, which allows the defendant and

[37] Justification of Act XC of 2017 on criminal procedure.

[38] Lívia Hidvéginé dr. Adorján – Ágnes Sáriné dr. Simkó: *Igazságügyi szakértők az egészségügyben* [Forensic experts in healthcare]. Budapest, Medicina Könyvkiadó Zrt., 2017. 276–277.

his defense attorney to have similar rights in criminal proceedings, which also comes from the principle of equality of arms. And all of this strengthens the fairness of the procedure in general, which can be a guarantee for the birth of judicial verdicts that are close to the material truth.

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