DOI: 10.32370/IA_2023_06_4

Issues of the Quality of the Forensic Expert Opinion and Some Forensic Errors

Kotlyarenko Lidiya
Doctor of Biological Sciences, Professor,
Professor of Department of theory, methodology and organization of physical training and sports of the National University of Defense of Ukraine
ORCID ID 0000-0001-5237-8564 *lida_oleg@ukr.net*

Myrovska Anna
National Academy of Internal Affairs
Professor at the Department of Criminalistics and forensic medicine Candidate of legal sciences, Associate Professor
ORCID ID 0000-0001-5714-1873 *a.mirovskaya@ukr.net*

Pavlovska Nataliia
PhD of Juridical Sciences, Associate Professor, Associate Professor of Theory and History of Law, Kyiv National Economic University, Kiev, Ukraine
ORCID ID 0000-0003-3311-0364 *wwwpav@gmail.com*

Patyk Lesia
associate professor, Forensic Science and Medicine Department National Academy of Internal Affairs, PhD in Law, associate professor
ORCID ID 0000-0002-3698-4799 *Lesya_rob@ukr.net*

Zherebak Viktor
head of the department of biological research and accounting
Zakarpattia region scientific research forensic center of the MIA (Ministry of Internal Affairs) of Ukraine
ORCID ID 0000-0002-9029-4799 *Viktor-zherebak@ukr.net*

Abstract

The concept of quality may be regarded as a composite structure comprising the support for the following elements: legal, scientific and technological, methodological, organisational, logistical. The quality of expert investigation is not an abstract concept; it actually exists and has a certain content that expresses substantial certainty, since it results in an expert opinion — judicial evidence. An expert opinion has a procedural (legal), scientific and technological aspects. The 'quality of forensic examination' concept therefore has a procedural (legal), scientific and technological content.

Key words: quality of expert opinion, court proceedings, expert errors, operational, gnoseological, errors of procedural character.

Introduction Thus, the very concept of ‘quality of forensic examination’ is composite and requires a comprehensive, systematic approach to its study [1, pp. 33–36; 3].

The concept of ‘quality’ is closely related to that of ‘efficiency’. It is generally remarked that an expert investigation should be complete, comprehensive, objective, etc., whereas an expert opinion should be complete, clear, consistent, coherent, informed, etc. Therefore, examining the efficiency of expert investigation and measures to improve it involves a simultaneous analysis of factors that raise the investigation quality and level, as well as reliability and validity of expert’s findings.

In the legal literature, less attention is given to the concept of ‘quality’. For example, I. P. Kononenko defines the quality of a forensic expert opinion as ‘a totality of legal, scientific and technological properties, which comply with the law and other regulations governing the conduct of forensic examination, and of instructional research rules applicable to a forensic expert opinion as judicial evidence’ [2, pp. 31–40; 4]. This definition is not objectionable on the whole. It makes it evident that quality describes outputs of a (forensic examination) system operation at its individual stages, i.e. a ‘finished product’, whereas efficiency describes the entire system, showing how this system functions in accordance with the tasks and objectives it was intended to address upon its creation. Some of these tasks are focused on delivering a product of a certain quality (such as giving an informed opinion); others refer to a procedure for the operation or to the process itself (such as timeliness of forensic examination). However, both are intended to deliver a certain result that reflects the degree of system efficiency.

It seems reasonable to conclude that efficiency is a broader category than quality and encompasses the latter.

Quality indicators of expert investigation are closely related to efficiency indicators of expert investigation.

Quantity indicators of efficiency ‘quality’ in an expert’s activities include:

1. Indicator of achieved objective of establishing evidence. It represents the ratio between the number of questions posed and resolved. Those questions are regarded as resolved to which answers have been given in a categorical (positive or negative) form, since such answers always contain actual data of evidentiary value. Resolved questions should also include those the answers to which have been given in conditionally categorical, alternative or

probabilistic forms, since conclusions containing such findings may be used to develop investigative leads. Only those questions should be regarded as unresolved the answers to which contain the wording ‘resolving this question was not possible.’

2. Number of forensic errors made by an expert. This indicator is derived by comparing findings of initial and repeat examinations, forensic examinations and case files of concluded proceedings (in which a final verdict or judgement has been passed), as well as by reviewing the supervised proceedings, and by monitoring outgoing expert opinions arranged at an expert institution. Here, high quality implies minimising expert’s errors or their complete elimination.

In a general view the expert error can be defined as inappropriate to the objective reality judgement of the expert or his action which do not lead to the solution of problems of expert research, or erroneous judgement which represent result of a diligent error. It distinguishes an expert error from a crime against justice which the expert can make. The problem of expert errors is practically undeveloped. The correct solution of a problem depends on possibilities and readiness of experts (I.Q., knowledge, skills and abilities, other features of the expert personality) [5].

At the same time the reason of an erroneous conclusion of the expert is not always a consequence of wrong actions of the expert. His research can be carried out faultlessly, and the drawn conclusions entirely correspond the received results, but if the initial data for examination were erroneous or investigated objects forged, etc., the conclusion of the expert in aspect of truth establishment in the case will be erroneous [6].

The analysis of expert practice allows revealing and classifying errors which are allowed at carrying out the judicial-ballistic examinations. By the nature they are not homogeneous and can be related to such kinds of errors: the operational; the gnoseological; the procedural.

Operational - connected with infringement of the established requirements to the sequence of actions of the expert and to conclusion arranging. They are characteristic almost for all investigation phases, in greater deal are met in practice of beginning experts. The essence of the given sort of errors of the expert in practice is characterised by the following factors: wrong instructions in the text of conclusions of materials receipt or the decision making dates, file number, etc.; absence of results of research on one of the questions.

Gnoseological errors - connected with the solution of problems by the expert, their occurrence depends on many reasons: from theoretical and practical preparation of the expert,

his experience, especially while carrying out the complicated judicial-ballistic researches which are seldom met in expert practice; from a scientific development of separate positions of judicial-ballistic examination and, eventually, from mental abilities of the expert. In their turn, gnoseological errors can be subdivided into logic and actual (subject) [7].

Logic ones are "the errors connected with infringement in substantial intellectual acts of laws and rules of logics, and also with incorrect application of logic methods and operations".

Actual, or subject, errors – the deformed idea of the relation between subjects of the objective world.

In practical activity of the expert gnoseological errors appear in such factors: In a wrong estimation in unified system of coincidence significance, and also the character of divergences; In a wrong estimation of informativeness of the revealed indications which coincide.

The given kind of errors is the most typical for identification judicial-ballistic examinations. It is explained by the complexity of the trace-making mechanism and the process of revealing and considerable subjectivity of an estimation of the common general and personal signs of traces of the weapon on the shot shells and sleeves.

Errors of procedural character – consist in infringement by the expert of a procedural mode and procedure of expert investigation. They include: Expert's going out the limits of his competence, in particular, his intrusion into sphere of legal character; Giving conclusions on the questions the decision of which does not demand special knowledge; Unreasonable, not enough motivated conclusions or conclusions' substantiations reached not by results of research, but by the criminal case materials; Discrepancy of the size of the carried out research and answers of the expert to the questions put to it; Non-observance of the rules of the expert conclusion arranging established by the law, in particular absence of necessary requisites in a conclusion; Giving the preventive offers which are based on unreasonable special knowledge of the expert [8].

Characterising the above-stated kinds of errors it is possible give the following examples. At the solution of questions connected with the establishment of the time of shots, and also at an establishment of carrying out of shooting from the weapon after last cleaning, experts-ballists fall outside the limits of their competence, do not involve experts of physical and chemical researches, and build the conclusions only by auxiliary signs. At research of the fire-arms, especially self-made, experts not to the full extend according to a technique, conduct

experimental shooting, solving the question of suitability of the weapon to shots and its reliability, but the fighting properties of the weapon are not investigated [9].

The reasons of errors of the expert can be a double nature: objective i.e. those which do not depend on the subject of expert research (expert), and subjective, that root in a way of thinking and (or) actions of the expert. The exhaustive list of objective and subjective errors in criminalistic literature it is not given.

The typical reasons of objective errors are the following: Malfunction of equipment's; Unfitness and not conformity of criminalistic materials to research requirements, etc.

The subjective reasons of errors:

Professional incompetence of the expert. It can be expressed in ignorance of modern expert techniques, inability to use certain means of research and to apply the most effective method in a certain situation. Professional oversights of the expert: negligence, carelessness. Influence of materials of the case, including conclusion of the previous examination, etc [10].

Expert errors can be revealed: At check by the expert of a course and results of research on any of its stages and especially at the stages of synthesising and a formulation of conclusions; At check of a course and results of research by the head of expert establishment or subsections; At an estimation of the conclusions by the inspector and court and in some other cases [11].

Working out of the questions of expert errors in judicial-ballistic examination and their prevention, for a long time demands fundamental scientific studying.

Conclusion It should be noted in summary that, in our opinion, setting up a system of reliable legal protection for a forensic expert as a participant in legal proceedings and a source of expert opinion would preclude (to a large extent) any potential physical or psychological pressure and would have a correspondent impact on the quality of investigation and validity of its findings.

References

1. Redin A. M. On Quality of Forensic Examination Findings and Their Evidentiary Value, in Forensic Science and Examination (Kyiv, 1979), vol. 19, pp. 33-36.

2. Kononenko I. P. Certain Procedural Specifics of Forensic Examinations Performed at Expert Institutions, in Forensic Science and Examination (Kyiv, 1976), vol. 12, pp. 31–40.

3. Forensic experts' mistakes: theoretical and practical aspects. URL: https://doi.org/10.32370/online/2019_03_25_2

4. "Lost opportunities" of preliminary researches in the conditions of the current Criminal Procedure Code of Ukraine. URL: http://elar.naiau.kiev.ua/jspui/handle/123456789/9567

5. Abramova V. Possibilities of detection and prevention expert's mistakes. *Use of modern scientific and practical achievements in improving the effectiveness of the fight against crime. Theses of reports of the scientific-practical conference*, 230-232.

6. Abramova V. & Svoboda E. Mistakes in forensic science: nature, conditions and types. *Criminalistics and forensic examination*: *Interdepartmental Scientific and Methodological Compendium*, (59), 72-78.

7. Forensics research of firearms, bullets and gunshot marks (forensic ballistics). URL: http://elar.naiau.kiev.ua/jspui/handle/123456789/10710

8. "Lost Opportunities" of previous studies in the current Criminal Procedure Code of Ukraine. URL: http://elar.naiau.kiev.ua/jspui/handle/123456789/9567

9. Kofanov A. Features of expert mistakes and some ways to prevent them during forensic examinations. *Criminalistics and forensic examination*: *Interdepartmental Scientific and Methodological Compendium*, (60), 275-287. URL: https://scholar.google.com.ua/scholar?as_q=&as_epq=%D0%9E%D1%81%D0%BE%D0%B1%D0%BB%D0%B8%D0%B2%D0%BE%D1%81%D1%82%D1%96+%D0%B5%D0%BA%D1%81%D0%BF%D0%B5%D1%80%D1%82%D0%BD%D0%B8%D1%85+%D0%BF%D0%BE%D0%BC%D0%B8%D0%BB%D0%BE%D0%BA+%D1%82%D0%B0+%D0%B4%D0%B5%D1%8F%D0%BA%D1%96+%D1%88%D0%BB%D1%8F%D1%85%D0%B8&hl=uk

10. Kofanov A. Some aspects of forensic training, their interaction with management and evaluation of their research. *A criminalistics issue: Scientific and Methodological Compendium*, 2 (20), 107-116. URL: http://elar.naiau.kiev.ua/bitstream/123456789/2066/1/%D0%9A%D0%BE%D1%84%D0%B0%D0%BD%D0%BE%D0%B2%20%D0%90.%20%D0%92..pdf

11. Kofanov A. Deficiencies of psychological-legal (professional) training of a forensic expert as prerequisites for expert errors. *A criminalistics issue: Scientific and Methodological Compendium*, 1 (23), 72-79. URL: http://elar.naiau.kiev.ua/bitstream/123456789/1870/1/%D0%9A%D0%BE%D1%84%D0%B0%D0%BD%D0%BE%D0%B2%20%D0%90.%20%D0%92..pdf