Comprehensive expertise. Useful or not?

Elżbieta Żywucka-Kozłowska

Ret. dr hab. asssoc. prof. dr hc., Poland, ORCID: https://orcid.org/0000-0002-6039-5580,
e-mail: malerude@poczta.onet.pl

Comprehensive expertise on the basis of criminal science has been known perhaps not for long, but at least for several years. In practice, it is relatively rarely used (most often in cases where a special investigation team is set up). The effectiveness of comprehensive expertise depends not only on the team of experts, but also on the decision-makers, which should be clearly emphasized. Investigations carried out at the beginning of the proceedings are a determinant of further investigative activities. The broader the perspective of the study, the more we know about what happened. Combined with forensic medical examinations, it allows to narrow down the scope of the search for the perpetrator and his identification.

Keywords: *criminology; forensic medicine; expert opinion; trace; investigation.*

Комплексна експертиза. Потрібна або ні?

Ельжбета Живуцька-Козловська

Комплексна експертиза на основі криміналістичної науки відома, можливо, не так давно, але принаймні кілька років. На практиці її використовують відносно рідко (найчастіше у випадках створення спеціальної слідчої групи). Ефективність комплексної експертизи залежить не тільки від команди експертів, а й від осіб, які ухвалюють рішення, на чому слід чітко наголосити. Дослідження, проведені на початку провадження, є визначальними для подальшої слідчої діяльності. Чим ширша перспектива дослідження, тим більше відомо про те, що сталося. У поєднанні з судово-медичними експертизами це дає змогу звузити межі пошуку злочинця та його ідентифікації.

Ключові слова: *кримінологія; судова медицина; висновок експерта; слід; розслідування.*

Comprehensive expert reports have been known for a long time, but in investigative practice they are relatively rare. Definitely more often performed on the ground of forensic medicine, which is confirmed by data from the literature of the subject [1—3]. It is clear that not all criminal proceedings require such enforcement. In investigations with a significant degree of difficulty, a comprehensive expert opinion seems to be a good solution, not only because of the procedural economy, but above all because of the relatively quicker response to annoying investigators. Examples are cases of homicide or accidents in land, air or water traffic. On the one hand, forensic medical examinations of the victims of such events are necessary in these cases, and on the other hand, it is necessary to establish the reasons. Therefore, physicochemical, event reconstruction, mechanoscopic, phonoscopic and other tests are performed. Forensic expertise, as R. Cieśla puts it, "*means the examination by experts of material evidence or facts for the purpose of issuing a verdict, used e.g. in the judiciary, medicine, technology...*" or "*the examination and solution of an issue requiring special knowledge with the help of experts*" [4]. The wide spectrum of investigative possibilities of forensic technology allows for multi-track or multi-faceted examination of materials secured in the case (traces), which become evidence in the case. While the scope of forensic medical examinations is broadened to include toxicological, histopathological and genetic examinations (because the basic ones are, after all, thanatological examinations), in such a perspective there is no obstacle to combining, for example, mechanoscopic examinations with physicochemical examinations. In the literature on road accidents, mechanoscopic, physicochemical and reconstructive examinations are the most frequently performed (apart from forensic and medical examinations). In addition to these, technical tests are always carried out on the condition of the vehicle at the time of the incident (suspension, steering and braking system). It is worth noting here the physicochemical research, which is extremely useful in criminal proceedings in a variety of cases, from incidents on the ground or in the air, to crimes against life and health.

M. Zubańska rightly pointed out that "the aim of forensic physicochemical research is to identify unknown substances, determine the properties of substances, compare substances with each other, identify and determine the properties of traces occurring in connection with events such as explosions, fires, use of firearms, road accidents, illegal production of controlled substances. In this case, we are dealing with identification studies and comparative studies; the difference between them lies in the nature of the problem solved" [5]. It should also be added that these studies have significant similarities to toxicological studies, since they include expertise on narcotic substances, including drugs and stimulants, alcohol content in body fluids and a whole range of other possibilities. Therefore, there is nothing to prevent the selection of the scope of expert studies in such a way as to combine them into a comprehensive whole. Forensic traces secured at the scene of events are an investigative reality, and their types or origin are very different. The essence of what is a trace in the sense of forensic science was pointed out by Tadeusz Hanausek when he wrote: "Traces in the sense of forensic science are all the consequences of these changes that can be determined in a certain section of reality, the group of which either creates an event or is closely connected with it (e.g. traces of escape, traces of concealment of loot, etc.)" [6]. Despite the multitude of definitions of traces, they have a common denominator, namely, they are the consequences of certain behaviours, facts and phenomena. They have a cause-and-effect relationship with them. Moreover, they must be of a material nature so that they can be disclosed and examined [7]. Therefore, if the common feature is their materiality, however macroscopic or microscopic, it is possible to study them comprehensively by one deliberately selected team of experts, where each of them will undertake a detailed search for answers to the question posed by the prosecuting authority. The order of securing the material by experts of particular specialties is important. It has been accepted (in Polish conditions) that biological traces, which are carriers of DNA, are protected first, and the remaining ones (from microtraces to microtraces). A special trace is the human smell, which nowadays can be protected and subjected to research. Forensic osmology has permanently entered the investigative practice, bringing positive results of the identification of the individual subject from which such trace originates. As with all such (identification) tests, comparative material (DNA tests, osmological tests, mechanoscopic tests, etc.) is of key importance. The comprehensiveness of the expertise allows for parallel examination of all types of traces at the same time, which significantly reduces the waiting time for the results of the examination. Many other examples could be cited here, but it does not seem necessary, after all, every practitioner, forensicist or prosecutor knows it well from their own experience. Advances in science and the development of research instruments not only allow much more accurate results of forensic exploration, but also shorten the time of proceedings, which is important in the perspective of detecting the perpetrator of the crime. A separate category of cases that are of interest to law enforcement are suicides, including those extended to imagine a homicide. The subject of the examination shall be any secured trace, including a human corpse, which is a trace in itself. They are also (usually) the carrier of traces left by the perpetrator or [8—10]. In such proceedings, it is necessary to determine not only the order of time of death (extended suicide), but also the mechanism of death and causation. In the case of mass disasters (maritime, air disasters) it is necessary to perform many forensic and forensic medical examinations. The simultaneous comprehensive expertise can be successfully used here, where a team of experts from many specialties is appointed to carry it out. Each of them secures the tracks for their own research, in the order adopted above. The waiting time for the results is significantly reduced and when compared with the results of the studies of other experts it gives a broader picture of the analyzed event.

The framework of the study does not allow for a broader presentation of this issue, which in my opinion is interesting and valuable in practice. I can only hope that this comprehensive expertise will find greater application in the practice of law enforcement agencies.

References

1. Żywucka-Kozłowska E., Malinowska I. Comprehensive forensic examination. *Актуальні питання вдосконалення*

судово-експертної та правоохоронної діяльності : зб. мат-лів засідання № 6 постійно діючої Міжнар. наук.-практ. конф. (Кропивницький, 12.10.2023). Кропивницький, 2023. С. 125—127.

2. Kartasińska E. Identyfikacja osobnicza na przykładzie opinii kompleksowej z zakresu badań daktyloskopijnych i genetycznych. Warszawa, 2016. URL: https://docplayer.pl/49491433-Identyfikacja-osobnicza-na-przykladzie-opiniikompleksowej-z-zakresu-badan-daktyloskopijnych-i-genetycznych.html (date accessed: 12.03.2024).
3. Murphy E. The New Forensics: Criminal Justice, False Certainty, and the Second Generation of Scientific Evidence. *California Law Review.* 2007. Vol. 95 nr 3. Pp. 721—797.
4. Cieśla R. Ekspertyza w ujęciu procesowym i kryminalistycznym. *Wrocławsko-Lwowskie Zeszyty Prawnicze*. 2013. No 4. Pp. 334.
5. Zubańska M. Kryminalistyczne badania fizykochemiczne—ekspertyza sensu largo, niekwestionowana, z definicji naukowa. *Przegląd Policyjny*. 2017. No 3. Pp. 86.
6. Hanausek T. Kryminalistyka — zarys wykładu. Kraków, 1996. Pp. 66.
7. Pikulski S. Procesowe i kryminalistyczne aspekty możliwości wykorzystania śladów zapachowych. *Studia Prawnoustrojowe.* 2002. No 1. Pp. 63—93.
8. Jarosz M. Samobójstwa. Civitas. *Studia z filozofii polityki.* 2018. No 22. Pp. 215—226.
9. Gądzik Z. Prawnokarna ocena samobójstwa. *Roczniki Nauk Prawnych.* 2012. No 22 (3). Pp. 137—161.
10. Głuch K., Gawliński A. Kto jest ofiarą? czyli o fenomenie samobójstw poagresyjnych. *Przegląd Prawniczy Europejskiego Stowarzyszenia Studentów Prawa ELSA Poland.* 2013. No 1. Pp. 84—99.