допомоги (фотографування, складання схем, планів, креслень, добирання зразків для проведення експертизи та ін.) сторонами кримінального провадження і судом під час судового розгляду [2].

Завдання спеціаліста полягає в тому, щоб на підставі своїх знань надати допомогу слідчому у виявленні та вилученні слідів злочину, предметів і документів, що можуть бути речовими доказами у кримінальному провадженні, та з цією метою брати активну участь у процесуальній дії.

Уже на етапі проведення слідчої (розшукової) дії спеціаліст допомагає слідчому у добиранні необхідних документів кримінального провадження, водночас не завдаючи їм шкоди, не змінюючи їх стану та маючи на увазі, що надалі для поглибленого дослідження цих об'єктів може бути призначено судову експертизу [3, с. 405].

Також під час складання протоколу процесуальної дії спеціаліст може правильно вказати слідчому назву документів, особливості упаковки та інші обставини, які повинні бути в ньому відображені. У разі невідповідності документів він з'ясовує причину, повідомляє про це особу, яка призначатиме експертизу чи залучатиме експерта, і надає необхідну допомогу в повторному або додатковому їх добиранні згідно з чинними правилами та інструкціями.

До початку слідчої (розшукової) дії, у якій бере участь спеціаліст, слідчий повинен особисто пересвідчитися в його особі, з'ясувати його ставлення до підозрюваного або потерпілого, роз'яснити йому права й обов'язки відповідно до ч. 3 ст. 223 КПК України. За необхідності у спеціаліста до початку проведення слідчої (розшукової) дії може бути взято підписку про нерозголошення відомостей, що є державною, банківською таємницею чи таємницею слідства, які стануть відомими спеціалісту через його участь у проведенні слідчої (розшукової) дії.

Порядок залучення спеціаліста під час судового розгляду відрізняється від досудового провадження. Спеціаліст у суді (згідно з приписами ст. 360 КПК України) дає усні консультації чи письмові роз'яснення на стадії дослідження доказів, учасники процесу можуть поставити йому питання щодо наданих ним консультацій у процесі дослідження доказів, тому в процесуальному законодавстві слід визначити, що ці консультації заносять (у разі усної форми) або приєднують (у разі письмової форми) до журналу судового засідання.

Отже, для участі у проведенні тимчасового доступу до речей та документів та їх вилученні під час виконання слідчих (розшукових) дій (зокрема, огляду речей та документів) ефективнішим буде залучення як спеціаліста атестованого судового експерта [4, с. 153]. Саме йому, як особі, що безпосередньо здійснює експертизу, відомо обсяг необхідних документів і речей, що згідно з методиками проведення експертиз необхідні для того, щоб зібраних (вилучених) документів було достатньо для проведення експертизи та надання об'єктивного висновку, який (згідно з ч. 2 ст. 84 КПК України) належать до процесуальних джерел доказів.

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L. Wieczorek,
Associate Profesor of Jan Kochanowski University in Kielce Head of the Department of Criminal Law, Criminology and Forensics Former Director of Prof. Jan Sehn Institute of Forensic Expertises in Kraków, Kraków, Poland

THE POLISH MODEL OF APPOINTING EXPERTS WITNESS — SELECTED ISSUES [1]

Based on the current legal status, consisting of: legal provision of Article 157 by the act The Law on the System of Common Courts [2] and the Ordinance of the Minister of Justice of 24 January 2005 on Expert Witness issued on this basis [3], as a result, a systemic model was developed, in which the authority authorized to appoint court experts witness is the President of the District Court. The President of the county court is the authority keeping the list of experts and exercising (at least formally) supervision over experts in his district. Bearing in mind the location of regional courts in the structure of common courts, we are dealing with a decentralized system. Deeper «decentralization» does not seem possible, as no one is considering transferring the decision to appoint experts to the level of district courts. In essence, the topic of discussion inspires the consideration of the dilemma: To maintain the current system of appointing experts witnesses or replace it with a centralized system.

It is therefore appropriate to ask a perverse question: Is such a choice necessary?

Currently, the recruitment process of individual experts is limited to assessing whether the candidate meets the requirements provided for in §12 of the Ordinance of 24 January 2005, among which the following can be distinguished:

1) «formal» requirements (having full civil and citizen rights, being older than 25 years old, «giving a guarantee» of proper performance of the duties of an

expert — understood in practice as no criminal record and consent to appointment of experts), and
2) substantive requirements ie. have theoretical and practical special knowledge in a given branch of science, technology, arts, crafts and Ordinance is statuing (Paragraph 2) that «The possession of special knowledge should be demonstrated by documents or other evidence». The term «or other evidence» used in this provision is the authorization for the president of the regional court to conduct (at least in doubtful situations) evidence proceedings based not only on the collected documents, mostly provided by the candidate, but also, for example, on testimonies of witnesses, information on the candidate's professional activity available on websites etc. In most cases, the only source of information about the candidate is the opinion of the workplace employing the person or the opinion of the professional organization to which the person belongs, in the case of a freelance candidate.

While the verification of the candidates' compliance with formal requirements does not give rise to any objections, the current method of checking whether a candidate «has special knowledge» is a subject of criticism by practitioners of the judiciary, representatives of legal science as well as professional expert associations that recognize the problem of entering on lists of expert witness with controversial qualifications. In particular, it is indicated that the provision of § 12 of the Ordinance of the Minister of Justice on court experts does not empower the president of the regional court to verify the qualifications of candidates for experts. As a result, the appointment of an expert candidate is determined by the documents provided by him (diplomas of graduating from schools, training courses and specializations, certificates of professional practice and opinions from the employer or professional organization) and the actual level of knowledge and professional experience of experts raises objections from the procedural authorities, parties to the proceedings and their defenders and attorneys.

One of the concepts to correct the described situation and implement reliable verification of experts' competences is based on the postulate of appointing by the president of the district court (in doubtful situations) a commission consisting of specialists in a given field of knowledge or specialization. The committee would give an opinion about the candidates applying to be an expert witness. It would therefore be a reformed system of decentralized appointment of court experts. This type of solution was proposed by the government bill on experts witness from 2008, however the committees provided by this bill were to provide opinions on the professional preparation of persons applying for the appointment of experts witness only on the basis of the collected documents and after conducting an interview. Another bill in dedicated in the topic experts witness from 2014 went a step further, granting an expert or a commission appointed by the president of the district court the right to demand «additional explanations» from the candidate, as well as to conduct examinations in organizational units applying for the appointment of court experts. Despite the indicated limitations, the implementation of these projects would constitute a significant progress compared to the current state, in which — as it was presented in the information on the results of the problematic audit on the «Functioning of experts in the administration of justice» carried out by the Supreme Audit Office — "The president of the district court does not have any tools that would guarantee proper verification of the professionalism, responsibility or impartiality of experts. The only way to check these people is to consult and submit documents. This assessment was left to the president, who obviously does not have the knowledge to make a substantive assessment" [4]. However, the above-mentioned proposals did not create a legal basis for verifying the qualifications of candidates for experts.

The model as opposed to the decentralized one, proposes entrusting training, verifying the competences of expert candidates and appointing them by a central authority (judicial or extrajudicial). To many people who refer to the so-called «common sense» proposals, this idea may seem unfeasible, mainly due to the large number of court experts, which at the beginning of this year amounted to almost 18,000 people. This is a lot when «experts» are treated as a homogeneous category of the concept and it is assumed that the problem of competence verification concerns all persons entered on the lists of district courts. However, when we are taking into account the individual professional groups, which we are including the experts on the lists, it is easy to see that not all experts require the same intensive and complex verification, for the following reasons:

1. The Substantive competences in some professions are confirmed by passing exams and granting specific professional titles, which do not need (or can) be verified as part of the assessment of the suitability of a given person to perform the function of an expert. If a doctor has obtained the second degree of specialization in a specific field of medical sciences and has demonstrated professional experience, it would be tactless to question his substantive preparation for giving opinions in this field. The same is true of many other professions np. auditors: auditors, tax advisers, patent attorneys, restructuring advisors, architects and construction engineers etc. The situation would be much better if it were not for the deregulation of professions, which meant that, for example, accountants (accounting for a significant percentage of experts) do not need to obtain certificates entitling them to provide bookkeeping services. A similar conclusion arises with regard to the situation of people who are sciantist researchers (without going into the divisions introduced by the last Reform of Higher Education and Science in Poland) although in this case a lot depends on the field of knowledge in which an expert witness got specializes. It is difficult to deny the competence to act as an expert doctor with a degree or an academic title, but in many other fields, a wealth of theoretical knowledge does not always translate into the professional experience necessary to evaluate the evidence. A computer science professor does not necessarily have to know about cybercrime. But this is a matter of demonstrated work experience and not of qualifications assessment.

2. There is also a large group of professions and craft specialties in which the mastery of their profession is achieved by taking an exam before the examination board of a guild or a professional association, and then these skills are improved in practice, e.g. chimney sweepers, shoemakers, jewelers, watchmakers, bakers, etc. Also. with regard to these groups of experts, it seems pointless to expand the competence verification system, as it is sufficient to examine the documents submitted by these persons and consult their professional circles.

A selective look at the community of court experts leads to the conclusion that not all professional groups have to be subjected to the same thorough verification of substantive qualifications. I will risk a statement that about 40 % of court witness from the lists of district courts can be assessed only on the basis of scientific and professional career documented by the submitted diplomas and certificates. Therefore, centralizing the training and assessing the competence of experts is not «physically» impossible, although it could undoubtedly generate certain costs. Therefore, it is worth trying to indicate the «third way», that is to create a system in which the verification procedure and appointing experts would be carried out at the central level and selected elements of the training would be decentralized.

This model should be characterized by the following assumptions.

A. Research conducted both by the Institute of Justice that hosts us and non-governmental institutions (Helsinki Foundation for Human Rights, Forensic Watch) shows that while insufficient substantive knowledge (de facto lack of «special knowledge») relates to a certain percentage of the expert population, ignorance of the applicable procedures — criminal and civil, and the inability to formulate the content of written opinions in a correct and understandable way for the procedural authorities and the parties, is a problem for most experts, especially during their first term of office. It is difficult to expect, for example, that a doctor detached from the slab will be familiar with the intricacies of the procedures (of course in the scope related to the role of an expert witness), unless he has previously undergone appropriate training. An indispensable element of applying for the status of an expert should therefore be training in the basic issues of the law of evidence, the procedural role of an expert witness and the provisions determining the principles of remuneration of experts. It is important that the subject of such training is developed centrally and that finally each expert is obliged to take a centrally developed test exam. In order to avoid the attempts to «cope» with the test, known from driver's license exams, numerous test variants must be developed. The state examination on legal issues is the first element of a «centralized» approach to organizing opinion-making activities

B. The second element of centralization is the introduction by the Minister of Justice of a uniform list of fields of science, technology, arts, crafts and practical skills in which it is possible to apply for the appointment of a court expert. Leaving this task in the hands of the presidents of district courts meant that the candidates themselves propose to define the specialization in which they would like to be entered, which means that the nomenclature of experts on the lists of district courts sometimes resembles the humor of school notebooks. The main problem with the current state of affairs is also the «incompatibility» of the lists of experts, so without contact (by phone, e-mail) with an expert witness from the list of another district court, it is sometimes difficult to find out whether you are actually talking to the right person.

C. Thirdly, the introduction of a central list of court experts, or rather an extensive application, which would make it possible to search for the expert witness according to various variables (specialization, court district, experience as an expert witness, scientific activity), combined with the obligation of experts to place both information and information in this application on orders performed for courts and other authorities, as well as information on professional achievements and change of contact details. At the same time, only the name of the expert witness, specialization, professional qualifications and information on professional achievements and contact details provided by the expert, as well as information on the temporary suspension of the expert's function, would remain open to all interested parties. By the other side, the application should make it possible to make entries in the tab concerning a given expert on criminal and disciplinary proceedings initiated against him and on fines imposed by procedural authorities. Courts should also make an annotation when in a given case the findings contained in the expert witness opinion did not constitute the basis for issuing the decision, but there was a need to appoint other experts.

D. The last postulate concerns the centralization of the method of verifying the competence of experts, however, unlike the examination on legal issues, I do not believe that this process should cover all experts entered on the lists at the same time or during one term of office. The relevant competence tests, which I will mention in a moment, should be solved in the first place by new candidates for the function of an expert, while the statutory regulation should specify much longer deadlines for considering the application for entry on the list of experts than it results from the provisions of the Code of Administrative Procedure. (generally 30 or 60 days). Gradually, after the «debuting» experts, competence tests should include experts in the first term of office and persons about whom there are indications of inadequate performance of the expert's duties. It is expected that the launch of a central list (application) of forensic experts will provide information over time on persons whose competences require checking. Among the remaining groups of experts, competence tests should first be subjected to experts in those specialties that have no equivalent in the education system, such as, for example, doctors, architects, surveyors, etc. «Proficiency» on the basis of the in-service training courses and are appointed as experts. Specialties that are of particular interest to «self-taught» experts are: «graphologists» (I am quoting here terminology from lists of many district courts), specialists in traffic accidents, experts witness in property valuation, as well as experts in various fields of forensics (dactyloscopy, ballistics, etc).

Central competency tests should be two-step: covering a theoretical test and issuing an opinion based on the presented facts. Scientists from leading academic centers and experienced experts witness in a given field should be involved in the development of tests. If the competency test is sufficiently difficult, then successfully passing it by an expert witness or a candidate for this expert would allow a given person to be treated as positively verified and not to repeat the examination when enrolling for subsequent terms of office, unless there are signals about incorrect performance of the expert's witness function.

All of the postulates described in my dilatation require action at the central level, but do not require the transfer to the central level of the full and comprehensive training of experts.

There is therefore no need to choose between «centralization» or «decentralization» of the experts witness.

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1. The Present publication is based on the unpublished text of a paper delivered by Leszek Wieczorek, Director of the Institute of Forensic Expertise. Prof. Jana Sehn in Krakow, during the Conference on Experts Witness in the Polish Justice System: Problems and Challenges in Warsaw organized by the Institute of Justice on 4 of March in 2019, during which the author submitted postulates that are still valid today.
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П. С. Восканян,
кандидат химических наук, старший научный сотрудник Национального бюро экспертиз Республики Армения,
г. Ереван, Республика Армения,
ORCID: https://orcid.org/0000-0003-3518-7015, e-mail: p.voskanyan@nbe.am
Э. Л. Титанян,
Национальное бюро экспертиз Республики Армения, г. Ереван, Республика Армения,
e-mail: emilia.titanyan@mail.ru

К ВОПРОСУ О ФОРМИРОВАНИИ ГОСУДАРСТВЕННЫХ РЕЕСТРОВ СУДЕБНЫХ ЭКСПЕРТОВ И НАУЧНЫХ МЕТОДИК В РЕСПУБЛИКЕ АРМЕНИЯ

Аннотация. *Рассмотрены актуальные вопросы и критерии формирования государственных реестров судебных экспертов и научных методик в Республике Армения, проанализированы действующие реестры Кыргызской Республики, Республики Казахстан и положение с подготовкой упомянутых реестров в Российской Федерации, а также соответствующие статьи модельного закона «О судебно-экспертной деятельности» Межпарламентской Ассамблеи государств — участников Содружества Независимых Государств.*

Ключевые слова: *судебно-экспертная деятельность, реестр судебных экспертов, реестр научных методик, валидированные методики.*

Abstract. *The article discusses actual and practical issues of state registers of forensic experts and scientific methods, as well as criteria for the formation of in the Republic of Armenia. In order to determine the criteria for the formation of the register, the current registers of the Kyrgyz Republic, the Republic of Kazakhstan and the situation with the preparation of the mentioned registers in the Russian Federation are analyzed. In the context of the conducted eximinations, the corresponding articles of the model law «On Forensic-Expert Activities» of the Inter-Parliamentary Assembly of Member Nations of the Commonwealth of Independent States are analyzed. The importance of including the validated methods in the register is emphasized.*

Keywords: *forensic-expert activity, register of forensic experts, register of scientific methods, validated methods.*

Анотація. *Розглянуто актуальні питання та критерії формуваня державних реєстрів судових експертів і наукових методик у Республіці Арменія, проаналізовано чинні реєстри Киргизької Республіки, Республіки Казахстан і стан підготовки таких реєстрів у Російській Федерації, а також відповідні статті модельного закону «Про судово-експертну діяльність» Міжпарламентської Асамблеї держав —учасників Співдружності Незалежних Держав.*

Ключові слова: *судово-експертна діяльність, реєстр судових експертів, реєстр наукових методик, валідовані методики.*

Начавшиеся со второй половины XX века процессы глобализации и (как результат) межгосударственной интеграции отразились на сфере правовых отношений. Как отмечают И. А. Кучерков и Т. В. Воронина, правовую глобализацию можно определить как процесс создания единых правовых принципов и методов правового регулирования с целью формирования единой правовой системы и наднациональных механизмов правового регулирования [1]. Многие международные организации приняли как руководство к действию идею правовой глобализации и страны постсоветского пространства не стали исключением. Так, регулирование процесса гармонизации и сближения законодательств стран СНГ было возложено на Межпарламентскую Ассамблею СНГ [2]. В контексте рассматриваемого вопроса необходимо отметить, что 19 апреля 2019 года Межпарламентская Ассамблея СНГ, рассмотрев представленный Постоянной комиссией Межпарламентской Ассамблеи СНГ по правовым вопросам проект модельного закона «О судебно-экспертной деятельности», постановила его принять.

Важность креативной составляющей этого модельного закона состоит в том, что в нём (наряду с изложением организационно-правовых основ и направления экспертной деятельности, положений по регулированию общественных отношений, возникающих при организации и проведении судебно-экспертных исследований) сформулированы два сверхважных положения, связанных с созданием