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EXPERTISE OF BODY INJURIES IN CRIMINAL PROCEDURE

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Summary

In the every day practice of answering questions from the area of medicine, today there is growing need for forensic medical expertise of body injuries in the criminal procedure.
Furthermore, when qualifying the body injury, the expert must possess knowledge and experience not only medical, but also he/she must be aware of the legal requirements and norms from the Code of Criminal Procedure and the Criminal Code of R. Macedonia. This will enable the expert to contribute to explanation and clarification of certain facts and issues related to the body injury. In this paper, by citing Articles 255 and 256 from the Code of Criminal Procedure, it is explained how expert can be adequately selected by the court. In addition to this, by citing Articele 271 from the aforementioned Code, a way of analysing body injuries is defined; and finally, defining of body injurie is explained through citing of Article 130 and 131 from the Criminal Code of R. Macedonia, which is regarding body injury and grave body injury.
The aim of this paper is to outline the method of performing these forensic medical expertises, i.e. by who and when can expertise of body injuries be asked and moreover, what is the legal and ethical responsiblity of the expert during the execution of the expertise. Additionally, the steps that the expert should follow when preparing a written statement and opinion for the type of the body injury are explained. More specifically, emphasis is placed on expert's requirements after examination of injured individual; after revision of the medical documentation during expertise of body injuries in criminal subjects; and providing oral statement and opinion during the criminal procedure.

Key words: choice of expert, expert – expertise of body injuries – body injury – grave body injury

Souhrn:

Posudky tělesného poranění při vyšetřování trestného činu

Při každodenní praxi řešení otázek z oblasti medicíny roste potřeba soudně medicínského posudku tělesného poranění během vyšetřování trestného činu. Znalec musí při hodnocení tělesného poranění mít znalosti nejen medicínské, ale musí si být také vědom právních požadavků a norem vyplývajících z Trestního řádu a Trestního zákoníku Makedonské republiky. To umožní znalci přispět k vysvětlení a objasnění určitých skutečností a věcí souvisejících s tělesným poraněním. V tomto článku, na základě citace článku 255 a 256 Trestního řádu Makedonské republiky, je vysvětleno, jak má být znalec soudem správně vybrán. Citováním článku 271 již výše uvedeného Trestního řádu je definován způsob analýzy tělesných poranění a konečně, definování tělesných poranění je vysvětleno citováním článku 130 a 131 Trestního řádu Makedonské republiky, který se týká tělesných a smrtelných poranění. Cílem tohoto článku je vysvětlit způsob vykonávání těchto soudně medicínských posudků, tj. kdo a kdy může být požádán o posouzení tělesného poranění, a dále, jaká je právní a etická zodpovědnost znalce během vykonávání posudku. Dále jsou vysvětleny kroky, podle kterých by měl znalec postupovat při přípravě písemného posudku a vytváření si názoru na druh tělesného postižení. Přesněji je položen důraz na požadavky znalce po vyšetření zraněného, po prozkoumání zdravotnické dokumentace, během posuzování tělesných poranění oběti trestného činu, a na podávání ústního vysvětlení a přednesení názoru během vyšetřování trestného činu.

Klíčová slova: výběr znalce – znalec – hodnocení tělesných poranění – tělesné poranění – smrtelné poranění

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Today, in the criminal procedure for court's necessities, there is growing need for forensic medical expertise which, being one of the material evidences provides professional assistance to legal subjects/court in solving questions and problems that are closely related to human's life and health.

Expertise of body injuries of live subjects is also part of the forensic medical expertise that consists of many questions from the area of medicine (3, 4, 10, 11, 16). Furthermore, from court's point of view, expertise of body injuries is needed in the case of: criminal acts against the life and the body, which include criminal acts on injuries on the body integrity and health deterioration (body injury and grave body injury); criminal acts against sexual freedom and sexual morale (sexual delicacies) and criminal acts against traffic safety (accidents) (12, 19).

Nevertheless, in order to objectively and accurately assess the level and the heaviness of the body injuries, the expert must be familiar with the law regulations and the legal rights and norms included in the Code of Criminal procedure and the Criminal Code of R. Macedonia, must have knowledge and experience from all medical areas of expertise that deal with diagnosis procedure and therapy of injury, and must administer full comprehension of expert analysis and examination. In other words, in expertise of body injuries, the expert needs to explain and assess the medical facts of the body injury and match those information with the law regulations and the legal rights and norms; determine the medical characteristics of the body injury; explain the medical content of the body injury; establish the consequential relationship between the crime event and the body injury; determine the potential consequences and complications and evaluate all other facts such as the time when the body injury happened, the means with which it happened, etc, that are related to the body injury and at the same time are of vital importance to the criminal procedure (1, 2, 6).

In the Code of Criminal Procedure, more specifically in

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article 255 and 256, it is precisely explained how the expert is selected by the organ that conducts the procedure.

Article 255

(1) The expert is selected from the existing list of expert by the court based on his relevant experience and knowledge, technicalequipment, reputation and other circumstances important for providing objective finding and opinion.

(2) The list of experts is created by public call.

(3) The list of experts is publicly announced and revised every two years.

Article 256

(1) Expertise is determined in a written order by the body whish conducts the procedure. In the order it will be included for which facts the expertise is performed and to whom it is entrusted. The order is also delivered to the parties.

(2) It for a certain kind of expertise there is a special institution or if the expertise may be performed within the frames of a state agency, such expertise, especially, the more complex ones, will be entusted to such institutions i.e. agencies. The institution or the agensy assigns one or several experts who will perform the expertise.

(3) When the expert is assigned by the body which conducts the procedure, then that body will assign an expert and if the expertise is complex-two or more experts.

(4) It within the court for certain kinds of expertise there are assigned experts, order experts may be assigned only if there is a danger of canceling or if the assigned experts are impeded or if other circumstances require it.

(5) The court, by previously acquired opinion from the expert, determines the deadline for the expertise and that deadline can be postponed by the court or by the expert.

From the articles cited above, more precisely in item (2) and (4), it can be concluded that the organ that conducts the procedure- the court- determines the expert by subjective decision i.e. it can select any expert from the existing record of experts, any specialized establishment or any expert not in the list, whereas in item (1) from Article 256 it is explained that the expertise is decided by written order by the organ that guides the procedure.

Even though according to the Code of Criminal procedure of R. Macedonia, the organ that conducts the procedure for execution of the forensic medical expertise can determine any expert, we consider that most competent in executing the expertise of body injuries of live subjects would be an expert who with his/her general medical knowledge and specialized forensic medical knowledge is susceptible to the law as well as he/she can match the medical facts with the judicial regulations, thus making an adjustment to the needs of judicial organs. [9, 10]

Body injuries' qualification is specific procedure agreed on by the Code of Criminal Procedure and the Criminal Code of every country.

In article 271 from the Code of Criminal Procedure of R. Macedonia, expertise of body injuries is explained:

Article 271

(1) Expertise of bodily injuries is regulary performed by an examination of the injuried, and if it is not possible or not necessary on the basis of the medical documentation or of other data in the records.

(2) After the injuries are correctly described, the expert will give his opinion particularly on the kind and weight of each separate injury and on their total impact withrespect to their nature or special circumstances of the case, what kind of consequences these injuries usually produce and the kind of consequences in the actual case the injuries prodeuced and with what and in which way are this injuires inflicted.

In item (1) from this Article it is stated that the expertise of body injuries can be performed in two manners i.e. by examination of the injured or by analysis of the medical documentation or other information relevant to the injury and consisted in the acts of the subject. In item (2) from this Article it is stated that when giving an opinion for the character of the body injury it must be taken in consideration what is the general outcome of those injuries, and what is the result in the specific case. Nevertheless, one injury can have different outcome depending on the sex, age, individual traits etc. Therefore, a unique, schematic explanation of the body injury cannot exist i.e. every body injury is case for itself. [5]

In the Criminal Code of R. Macedonia the body injuries are analyzed in two articles: Body injury (Article 130) and Grave body injury (Article 131):

Body injury
Article 130

(1) A person who injuries bodily another, or damages his health, shall be punished with a fine, or with imprisonment of up to three years.

(2) A person who executes the act in item 1 during family violence, shall be punished with imprisonment of six months up to three years.

(3) The court may sentence the perpetrator of the crime from item 1 to a court reprimand, if he was provoked with especially insulting or rude behavior by the damaged person.

(4) The prosecution for the crime from item 1 is undertaken upon a private suit, and for item 2 by proposition.

A grave body injury
Article 131

(1) A person who gravely injuries bodily another, or damages gravely his health, shall be punished with imprisonment of six months to five years.

(2) A person who executes the act in item 1 during family violence, shall be punished with imprisonment of one up to five years.

(3) A person who gravely injuries bodily another, or damages gravely his health and if because of this the life of the injuried person is brought into danger, or a vital part of the body or same important organ is destroyed, or is damaged permenently or to a significant extent, or a permanent disability for work is caused, in general or for the work for which he is trained, his health is damaged permanently or gravely, or he becomes disfigured, – shall be punished with imprisonment of one to ten yars.

(4) If because of the grave body injury from items 1–3 the injuried person dies, the offender shall be punished with imprisonment of at least one year

(5) A person that commits the crime from items 1–3 from negligence, shall be punished with a fine, or with imprisonment of up to three years.

(6) A person that commits the crime momentarily, brought without his guilt into a state of great irritation by an attack or grave insult by the damaged, shall be punished for the crime from items 1 and 2 with a fine or with imprisonment of up to three years, and for the crima from items 3 and 4 – with imprisonment of one to five years.

From all cited articles it is noticed that physical injury in art. 130 and heavy physical injury in Statute 1 and 2 article 131 is defined as negative, while the heavy physical injury (qualified-especially heavy physical injury) in item 3 art. 131 is defined through qualified elements. From all the above, it can be derived that the expert should mark the degree and heaviness

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of the injury according to all definitions, meaning that the posited injury should be recognized by one of the defined conditions in propositon 3 art. 131 or by eliminating the previously mentioned qualified elements. [3]

Expertise of physical injuries is made at the moment they occur, but in some cases it is made after the treatment.

Hence, the aim of this paper is to explain the role of the expert throughout expertise of physical injuries of live individuals during the criminal investigation or cases in which high level of performance by the expert is required as well as what the actions and responsibilities of the expert while performing the expertise are.

One of the responsibilities of the expert during the every day work is making an expertise of body injuries on live individuals in written format. The execution of the expertise of physical injuries on live individuals consists of: setting diagnosis and opinion about the type and the character of injuries after the immediate examination of the injured person and setting diagnosis and opinion about the type and character of injuries in expertise of physical injuries in criminal investigations.

1. Making an expertise for the type and the character of the injuries after immediate exam of the injured person.

Often the examination of the injured person (physical examination of the participant in the criminal act-injured or accused-defendant) are required from the court by written order (noticed in item 1 and item 2 from art. 256 from the Code of Criminal Procedure of R. Macedonia) in any phase of the criminal investigation, but they also might be required from the Ministry of foreign affairs in written (examination of the injured person which was affected during a rape, while except the physical examination, a gynecological examination is required also) or from the injured person by written order (physical injury of the injured person by family violence). [7, 11, 12, 19] At our Institute, most often, there is an examination of the injured person that was hurt during some incriminating event (quarrel, fight, rape) in order to determine the existence of injuries occurred during the criminal event, but also there are cases when the examination is conducted on the accused of the criminal act in order to determine the existence of some fact which would be of great importance in further course of criminal investigation.

The expertise of physical injuries, when examining an injured person consists of two phases.

The **first phase** concerns examination of the injured person and consists from the following responsibilities:

- obtaining general information (name and surname, year of birth, place of living, marital status and occupation);
- obtaining information from injured person, which concern the place of the act, the time (the exact date and time) of occurrence of the injuries, the weapon that was used and the way the injuries occur;
- date and time of the conducted examination;
- examination of the body of the injured person meaning the existence of injury;
- the acknowledgement of every single injury in terms of localizations, type and characteristics of the injuries and their input drawing in specific schemes and
- taking photographs of every injury.

Depending on the questions asked in the court order or the written order of the Ministry of internal affairs, in some cases it might be required:

- examination of the clothes about potential presence of suspicious biological indications (blood, hairs, sperm). In case, these substances are found, lab analysis is performed for determining in which blood group it belongs;
- gynecological or anal examination by taking vaginal or anal sample;
- taking vein's blood for proving eventual presence of ethyl alcohol.

In case when body injuries, for which there is a suspicion that appropriate means are used (e.g. wound that needs cleaning or chirurgical sewing or breaking bone's tissue that needs x-rays), are ascertained, than the injuries are analyzed again and the injured individual goes to relevant specialized establishment. Furthermore, if it is concluded that there is no need of hospitalization, the finding from the examination must be delivered to our Institute, more specifically, to the expert that performed the analysis.

The **second phase** is regarding presentation of findings and opinions in written form that consists from the following:

- every information obtained during the examination of the injured individual i.e. generalities of the individual, event description, as well as detailed description of every injury classified regarding the body location, which is performed based on fixed spots on the body and potential characteristics, i.e. if injuries such as bruises, heamatom, contusion are detected, then the form and the size are described whereas in cases where wound is detected, then the angles, the corners, the bottom, the latitude are analyzed.
- answer to the questions asked in the written order in language understandable for the juridical individuals. Additionally, the questions asked are usually regarding opinion for the type and the character of every separate injury and their mutual result (qualification of the body injury in agreement with the regulations set in the Criminal Code of R. Macedonia). However, in some cases, there is call for opinion regarding the time of the event, the means used and how the injury occurred.

Furthermore, in cases where the examination of the injured individual is performed by us, not only are the findings and opinions in written form important, but also the schemes that present the observed injuries, the photographs of every injury and every lab analysis. Nevertheless, everything mentioned is material evidence in the criminal procedure.

2. Providing findings and opinions for the type and the character of the injuries during expertise of body injuries based on medical documentation

Expertise of body injuries in criminal cases is always performed by written court order (explained in item 1 and 2 from Article 256 of the Code of Criminal procedure) in any phase of the criminal procedure, while the manager of the special establishment i.e. the Institute of forensic medicine and criminality that has received the written order together with the criminal subject, determines the expert and the number of experts (usually there are two or three expert depending on the case) that will conduct the expertise.

Furthermore, the execution of expertise of body injuries in criminal subjects consists of three phases.

The **first phase** is regarding close examination and getting acquainted with the questions asked in the written order and the acts that are within the subject (Plaintiff's statement of fact by the Public prosecutor, decision that enables investigation against the defendant, which is given by investigation judge or by private criminal suit by the defendant, and it contains data relevant to the crime event i.e. date, time, place, means and how the injury happened; medical documentation that concerns the injuries; report from the crime scene; court statements from the defendant, the injured and from witnesses; photo-documentation and sketch from the crime scene made by crime techniques from the Ministry of Internal Affairs; expertise by crime techniques from the Ministry of Internal Affairs, and if possible expertise from doctors- experts in other areas.)

Furthermore, the **second phase** is concerning examination of the injured so as to submit any additional medical documentation that is not included in the subject and additional examination is performed. In other words, in this phase, the medical documentation is totally completed (e.g. for injury of the bone's tissue x-ray is required, for some potential consequences medical notes from other

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examinations are needed etc.), and examination is done in case of some complication or scar

Finally, the **third phase** is providing a finding and opinion in written form. Additionally, few important things should be outlined:

– in the finding the complete medical documentation should be cited (medical documents, medical history of illness from the hospital, findings from relevant examinations, medical notes); in some cases certain facts from the crime scene report are also quoted as well as court statements from the defendant, the injured and witness, findings from other expertise and expertise performed by medical experts in other areas.
– In the opinion, the most significant facts and details, which result from the cited medical documentation and relevant acts, are outlined and moreover, opinion is given regarding the level of each body injury and the total mutual effect. More precisely, the injury is explained through qualifying elements clarified in item 3 from Article 131 in the Criminal Code. Additionally, the juridical individual- the judge should recognize whether it is body injury- Article 130 or grave body injury- Article 131 from the Criminal Code of R. Macedonia. In cases when lack of necessary facts exists, the opinion cannot be closed with absolute assurance, hence phrases like „we cannot overlook the possibility that…“, „there is much probability that…“ (e.g. if in the cited medical documentation there is no detailed description of the injuries concerning their location, the type or only the Latin diagnosis is mentioned, then the time, the means or the way the injured happed cannot be defined with certainty; or if the brain tissue is injured, and the treatment is finished, we cannot feel confident that in the future there will be no epilepsy as outcome of the injury).

Furthermore, not only the aforementioned tasks are important, but also the oral statement of expert during the judicial procedure is of great significance. [10, 11, 16]

Experts can also be invited to court to give supplementary opinion for some previous expertise in cases when certain facts should be further clarified and explained; when questions that were not previously asked should be answered, when expertise by other expert, that is contradictory, exist or when the expertise is not in favor of some of the parties.

Finally, expert's obligations consist from the following: he/she should not participate in explicating legal questions and questions regarding guiltiness, he/she should provide explanation to questions asked by the judge or the parties and only to those concerning medical issues, if question regarding new facts are raised then the expert can ask for certain time period in order to provide opinion, as well as he/she can ask question to the parties, whose answer would be on of the important facts for determining the juridical truth in the expertise.

CONCLUSION

The expertise of body injuries provided by adequately chosen expert, determined by the court, has high possibility to be accurate and objective, as well as it is one of the significant material evidences in the juridical procedure and moreover it always leads to proper and timely bringing of judge verdict.

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