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FORENSIC EXPERTS' MISTAKES: THEORETICAL AND PRACTICAL ASPECTS

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). 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.

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).

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.

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.

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 equipments;
- 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.

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.

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

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