THE PROBATIVE VALUE OF FORENSIC DOCUMENTS IN THE CASES OF OFFENSES AGAINST LIFE (MURDER)

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Abstract:
Evidence does not have a pre-determined value established by the legislator and there is no evidence with higher probative value, regardless of the authority from which it emanates. Thus, neither the experts' report nor the opinions issued by the supreme scientific authority in the field of forensic medicine have a higher probative value than the other scientific evidence administered in the case. Thus, the judicial bodies may consider or dismiss any of the conclusions of the expert reports carried out in the case, regardless of whether or not they have been endorsed by the Superior Forensic Commission.
There are provisions in national law authorizing the competent forensic institutions to issue opinions which elude the requests of the judiciary and thus refuse cooperation whenever the needs of the investigation so require, but this it is not in accordance with the main duty of the state, namely to guarantee the right to life, by establishing an effective legal and administrative framework to determine the cause of death of an individual.
As a result, the establishment of a legal framework in the field of forensic expertise is required so as to allow the issuance of opinions by the supreme scientific authority in the field of forensic medicine, to clarify or evaluate facts or circumstances that are important to find out the truth, in order not to divert the criminal proceedings from its purpose, namely that any person who has committed a crime be punished according to their guilt and that no innocent person should be held criminally liable.
Keywords*: Forensic Expert Report, Forensic Opinions, Judge's Conviction, Presumption of Innocence, Assessment of Evidence, Factual Situation, Syllogism, Criminal Trial, Court Decision*

Preliminary considerations

A relatively recent resolved case brings back into question, remaining problems regarding the epistemology of the forensic investigation of crimes against life.

The present study will focus on aspects regarding the on-site investigation, the examination of the corpse, the medical data and the probative value of the forensic reports and the opinions of the Superior Forensic Commission in the case of the crime against life and especially when dealing with a suspicious death [1].

At the same time, this scientific approach will seek to respect the general, but also to highlight the particular, as it presents itself in reality.

For an easier understanding of the case, the brief chronological conduct of the trial in the first instance and on appeal will be presented.

Judgment of the first instance

Thus, by the criminal sentence no. 19 of January 28, 2020 of the Gorj County Court[1] pronounced in the file 1299/95/2019 based on art. 396 para. (5) referred to in art. 16 para. (1) lit. c) Criminal Procedure Code, the defendant V. I. was acquitted, for committing the crime of murder, sanctioned by art. 188 para. (1) Criminal Code.

In essence, it was noted that through indictment no. 623 / P / 2018 of 14th of May 2019 of the Prosecutor's Office attached to the Gorj County Court, it was ordered to be sent to trial, in a state of pre-trial detention, the defendant V. I., for committing the crime of murder, provided by art. 188 para. (1) Criminal Code.

In the act of notification, it was noted, in essence, as a fact that, on December 21st, 2018, the defendant V. I. applied to the victim R. M. blows with hard bodies in the skull area, which led to her death on the 22nd of December 2018, (without indicating the time, place, vulnerable thanatogenerator body and victim-aggressor position our a.n.).

The first instance court held that the evidence administered in this matter must clarify the essential aspects of the criminal offense in the field of crimes against life, namely [2]:

- correct identification of the causes of death [3];
- the time and place of the act for which the accusations were made [4];
- the existence of an own deed of the accused person [5];
- clarification of the consequences of the accused's own deed [6].

Relating these criteria to the case brought before the court, the court noted that from the documents and works of the case it could be established that on 22.12.2018, around 04:00, the police bodies were notified by the named VI (son of the defendant)

1 Available on www.rolii.ro.
2 As it has been constantly shown in judicial practice (criminal sentence no. 197/2011 pronounced by the Gorj County Court in file no. 15709/95/2011, amended by decision no. 362/2012 of the Craiova Court of Appeal, which remained final by decision no. 3419/2013 pronounced in the file No. 5012/1/2013 of the Supreme Court).
3 The verification of the mechanism of occurrence of the death is important for establishing the eventual instruments through which the death was caused, which, in turn, will lead to the identification of the instruments in their materiality, the taking of biological samples, fingerprints. Establishing the instrument that caused the death, but the lack of identification at the scene or at the home of the suspects makes the evidence not contain elements by which the act is more easily attributed to a particular person and allows the exclusion of others from the circle of suspects.
4 The correct determination of the crime scene allows the collection of traces, including biological ones from the victim. This evidence is necessary to identify the culprit and to exclude persons who were originally part of the circle of suspects but who did not cause the fatal outcome. In relation to the establishment of the moment and place of the deed, the defenses formulated by the accused person regarding his presence in another place are verified.
5 In the absence of evidence relating to the act itself and the causal link between it and the fatal outcome, no conviction can be handed down. In this context, it is necessary to clarify the defenses of the persons in the circle of suspects regarding the place where they were at the time of the victim's death.
6 The contributions that could not lead to death are thus highlighted, the defenses of the accused person regarding the lack of aptitude of his act of conduct in producing the lethal consequence are verified.

regarding the fact that at her father's home in the town of Ţicleni, in a room of the house, there is a deceased woman named RM, who showed signs of violence on her face and body.

From the forensic report autopsy no. 1856/22.12.2018 it results that the death of the named R. M. was violent, it was due to the meninge-cerebral hemorrhage with ventricular flooding as a result of a craniocerebral trauma. The injuries could have been caused by hitting with hard bodies, compression with the finger (injuries to the arms and thighs), crawling (injuries to the hip and left flank) and possible fall (injuries to the lumbar region and knees), those at the level of the skull directly related to the cause of death. In the blood collected at the autopsy, 2.83 gr./00 ethyl alcohol was detected, and the death of the named R. M. can be dated December 22, 2018[2].

During the criminal investigation, the forensic examination of the defendant was also ordered, and from the forensic report no. 1854 / 22.12.2018 to S. M. L. Gorj, it turned out that he presented traumatic injuries that could have occurred by hitting with a hard body scratching the nail, the injuries can date from December 22, 2018 and require 7-8 days of medical care. The defendant showed an excoriation of 10 / 0.5 cm. on the right forearm anterior, and the coroner concluded that it is produced by scratching with the nail.

At the same time, a judicial genetic expertise was ordered in the case[7].

Subsequently, by the conclusion of 12.08.2019, the court, taking into account the

7 The conclusions of the expertise were submitted by the National Institute of Forensic Medicine Mina Minovici Bucharest - Genetics Laboratory during the preliminary chamber procedure. The expert paper showed that:

1. The analysis by rapid identification tests of biological microworms revealed the presence of human blood on several garments of the so-called R. M. (two sweaters, blouse, panties and scarf), on the bedding raised from the home of the defendant V.I. (the three sides of the pillow and sheet), as well as on a series of clothing items belonging to defendant V.I. (T-shirt, sweatpants, shorts, panties);
2. No traces of semen were detected in the vaginal secretion of the said R. M;
3. The genetic analysis of the traces of blood identified on the clothing worn by the so-called RM showed on the two sweaters, the body blouse, the sweatpants and the scarf one and the same female genetic profile, in perfect correspondence with the genetic profile of reference of said RM; per panty: a mixture of genetic profiles from at least two people, of which at least one is male, and the genetic characters from the reference DNA profiles of the said R. M. and the defendant V.I. are found in this mixture;
4. The genetic analysis of the biological traces taken from the said R. M. highlighted: for the vaginal secretion, the area of the hands and, under the neck" one and the same unique female genetic profile in perfect correspondence with the reference genetic profile of the said R. M.; for traces taken from the thighs: a mixture of genetic profiles from at least two persons, of which at least one is male, and the genetic characters from the reference DNA profiles of the said R. M. and the defendant V.I. are found in this mixture;
5. Genetic analysis of biological traces taken from defendant V.I. highlighted: in the subungual deposits: a unique male genetic profile, in perfect correspondence with the reference DNA profile of the defendant V. I.; on the face: a mixture of genetic profiles from at least two people, of which at least one is male, and the genetic characters from the reference DNA profiles of the said R. M. and the defendant V.I. are found in this mixture;
6. Genetic analysis of traces of blood on clothing worn by defendant V.I. highlighted: on the panties: a unique male genetic profile, in perfect correspondence with the reference DNA profile of the defendant V. I.;
7. The genetic analysis of the traces of blood drawn from objects in the defendant's home revealed: on the three sides of the pillow and sheet: one and the same unique female genetic profile in perfect correspondence with the reference genetic profile of the so-called R. M.; for reddish-brown traces (blood) on the stove: a mixture of genetic profiles from at least two persons, of which at least one is male, and the genetic characters in the reference DNA profiles of the named RM and the defendant VI are found in this mixture.

inaccuracies between the forensic documents in the criminal investigation file and, implicitly, the insufficiency of the forensic information provided by them, ordered a new forensic examination by Craiova Institute of Forensic Medicine, establishing 13 objectives.

From the conclusions of this report results that the death of the named R. M. was caused by meninge-cerebral hemorrhage as a result of a craniocerebral trauma produced by an active mechanism (most likely). Cranial wounds were most likely caused by active mechanism, by repeated hard body blows and possibly an elongated hard body with an irregular surface, and the time of death could not be established with certainty, as it could date from the afternoon of 21.12.2018.

Next, seeing the conclusions of the forensic report (autopsy) no. 1856 of the 22nd of December 2018 drawn up by the Gorj Forensic Medicine Service and of the report of new medico-legal expertise no. 2649 / A5 / 23rd of September 2019 prepared by the Institute of Forensic Medicine Craiova, and the lack of essential data for clarifying the factual basis and implicitly finding out the truth, by concluding on 08th of October 2019 it was ordered to verify and scientifically approve the conclusions of two reports of forensic expertise by the Superior Forensic Commission within the National Institute of Forensic Medicine Mina Minovici Bucharest.

On the 19th of November 2019, the file was forwarded to the file E1/13127/2019 of the Superior medico-legal Commission within the National Institute of Forensic Medicine Mina Minovici Bucharest, by which the report of new medico-legal expertise no. 2649/A5/23rd of September 2019 prepared by the Institute of Forensic Medicine Craiova.

In this case, the court found that the evidence administered in the case does not fully and convincingly outline the circumstances of the alleged act, in this case not being elucidated in the criminal investigation phase the factual circumstances in which the suspected death of the said Republic of Moldova occurred and no substantiated situation was established. on certain proofs of guilt, it is necessary to give efficiency to the rule according to which any doubt is interpreted in favor of the defendant (in dubio pro reo), as established by the provisions of art. 4 para. (2) from the Criminal Procedure Code.

Following the logical, scientific and rigorous analysis of the revealed facts, respecting the principles regarding the loyalty of the administration of evidence and the

assessment as a unitary whole, the court found the insufficiency of evidence to support that the defendant V. I. committed the crime of murder, prev. and ped. of art. 188 para. (1) of the Penal Code, and according to art. 396 para. (5) referred to in art. 16 para. (1) lit. c) Criminal Procedure Code, acquitted the defendant.

The decision of the court of appeal

The prosecutor's office appealed against this sentence. In the grounds of appeal, among others, it was shown that: the court of first instance unjustifiably removed the report of new forensic expertise; that this undoubtedly results in the mechanism of production of the injuries and that the death of the victim occurred a few hours after the blows were applied; that in the case of the crime of murder the law does not provide for the existence of a motive; that the windows should not have been described in the on-site inspection report, as it appears from the photographic drawings that they had foil and that it was found to be intact; that no drops of blood were found on the wall as the bed had a high headboard; that the handkerchief had no traces of blood, which proves that the victim did not have bleeding lesions when she was brought into the defendant's house, that it was not necessary to establish the activity of the victim and the defendant prior to the crime. At the same time, it is also shown that: the death of the victim occurred on December 21, 2018; the victim was standing or on the bed in a sitting position at the time of the blows, so no drops of blood were found; the defendant's injuries are from December 21; that the defendant struck the victim with a hard body described as a piece of wood as she would more than likely have refused to have sex with the defendant.

In other words, a new state of affairs is described, than the one with which the court was invested by the indictment, but also this one without factual conductivity.

By the criminal decision no. 216 of February 18th, 2021 of the Craiova Court of Appea based on art. 421 point 2 lit. a) Criminal Procedure Code the appeal declared by the Prosecutor's Office attached to the Gorj County Court was admitted and the appealed criminal sentence was annulled based on art. 188 para. (1) Criminal Code the defendant V. I. was sentenced to 10 years imprisonment under the conditions of art. 60 of the Criminal Code, applying to the defendant the complementary and accessory punishment.

In order to pronounce this decision, the court held that (following the re-hearing of

the defendant and the witnesses), The evidence administered during the criminal trial, as described so far, the statements of the witnesses, who observe the victim at the bottom of the stairs, speak to this and does not notice traces of blood in the head area, four witnesses who meet the defendant on the afternoon of 21st of December 2018 and notice that he had traces of blood on his shirt and shorts containing one and the same genetic profile in perfect correspondence with the victim's DNA profile, the report of new forensic examination establishing that the death occurred due to meninge-cerebral hemorrhage due to a craniocerebral trauma produced by active mechanism, hard body elongated impact with multiple irregular surfaces, genetic expertise report which proves that the only person in the room with the victim was the defendant and refutes his defenses regarding the maintenance of relations sexual, the injuries presented by the defendant that were produced during a fight with the victim, the statements of the defendant, his behavior when the victim was bleeding profusely, prove that on 21st of December 2018 the defendant VI applied repeated blows to the so-called RM hard in the temporal and occipital area of the head, which led to her death from meninge-cerebral hemorrhage.

The Court finds that the act of murder, prev. of art. 188 para. (1) of the Criminal Code for which the defendant was sent to trial exists, constitutes a crime and was committed by the defendant V. I. with guilt in the form of indirect intent, taking into account the vulnerable object used ,,elongated hard body with irregular surfaces,, head area, intensity of blows, their number, heavy bleeding that caused the blood to pass through the mattress on the bed and the connection of causality between the action of the defendant and the death of the victim.

The appellate court, finding that the guilt of the defendant has been established beyond any reasonable doubt, will proceed to convict him for committing the crime of murder prev. of art. 188 Criminal Code”

It is noted that the appellate court, accepting the criticisms of the prosecutor's office, gave implicit priority relevance to the new forensic report, endorsed by the Superior Forensic Commission operating under the Institute of Forensic Medicine "Mina Minovici" Bucharest.

In the following, there will be no analyze the judgments in question, although a simple reading shows that the appellate court, in its own reasoning, uncritically took over

passages from the prosecutor's opinion set forth in the ground of appeal regarding the acquittal, not being therefore exempt from easements.

Thus, in the two procedural acts it is erroneously noted that the first instance removed the report of new forensic expertise, the culmination, ordered by the first instance at the first trial. Obviously, this support cannot be received, for the simple reason that the payment solution was pronounced on the basis provided by art. 16 para. (1) lit. c) of the Code of Criminal Procedure, ie there is no evidence that the defendant committed the crime. The option of the first instance therefore excludes this possibility expressed by the prosecutor in the reasons of the declared appeal. And, yes, maybe the first instance had to rule on the acquittal on the grounds that the deed does not exist. However, for reasons of ,,own technique and tactics” probably anticipating the prosecutor's criticism that, the judge is not allowed to remove an expert paper prepared by the 12 most famous doctors in Romania”, the first instance chose as a basis for acquittal provided by art. 16 para. (1) lit. c) Criminal Procedure Code[8], translating into lack of evidence.

In other words, not removing explicitly the new report, the judge of the merits was probably, forced” to give precedence to the conviction based on the whole probative ensemble under the conditions of art. 103 Criminal Procedure Code, to the detriment of the intimate conviction[9].

On the contrary, the appellate court took over the prosecutor's assertion, tale quale”, implicitly removing in the process of evaluating the evidence, the genetic expertise report prepared in the case, which invalidated the thesis of the fight between victim and defendant, which was not even described. in the act of notification of the court.

It is noted that the prosecutor, finally, after the trial in the first instance, through the grounds of appeal, exposes and imposes inextricably a new state of affairs regarding: the

8Seen from the outside, of course, in relation to the evidence in question - including genetic expertise - the most appropriate solution was to acquit the defendant on the grounds that the deed did not exist.

9 In connection with the intimate conviction of the judge, the court of constitutional control had a winding path, so that by decision no. 43 of 23.03.1999 and decision no. 60 of 30.03.2000 ruled that the provisions of art. 63 para. (2) Criminal Procedure Cod are constitutional. In a short time, without any legislative change, by decision no. 171 of 23.05.2001, in the same composition, the Constitutional Court of Romania admitted the exception of unconstitutionality, finding that “the provisions of art. 63 para. (2) Criminal Procedure Code contravene art. 123 para. (2) of the constitution, according to which the judges are independent and are subject only to the law”.

At the time, the court found that in the Constituent Assembly, during the debates on articles of the draft Constitution and the Report of the Drafting Commission (published in the Official Gazette of Romania, Part II, No. 35 of 13 November 1991 and respectively, No. 36 of November 14, 1991) the proposed amendment regarding the completion of the final thesis of para. (2) in art. 123 of the Constitution with the phrase,,[...] and their intimate conviction”. After the debates, the Constituent Assembly rejected by a majority of votes this amendment, thus expressing, its will for the judges to obey, only the law”, and not, their intimate conviction”.

date of death of the injured person, the date of injuries on the forearm of the defendant, determines for the first time the motive of the crime, the vulnerable body thanatogenerator (piece of wood, put in the stove and burned), the position of the victim at the time of the hit, the approximate time of the blows, explaining the reason why no material blood samples were found on the spot.

Accepting the state of affairs exposed by the prosecutor, we wonder why the defendant was not sent to trial for committing the crimes of attempted rape and leaving without help a person in difficulty stipulated by art. 32 rap. to art. 218 Criminal Code and art.203 Criminal Code?

Likewise, if the prosecutor had two exhaustive and dubious variants regarding the state of affairs, the first instance his own variant, and the appellate court on its own, what can the defendant, the parties or a neutral observer think? What is the truth? Did the court do justice? Convinced the decision of the last court he represents, isn't it true that res judicata pro veritate habetur? There are as many unanswered questions[3].

All these questions would not have existed if the on-site investigation was done professionally, if the material blood samples were taken, if the victim's temperature was taken using a simple thermometer, if the defendant's blood alcohol level was established, the corpse was thoroughly examined, every injury was noted, including previous ones at the level of the skull, if the corpse has been moved from the place of application of the alleged blows, the establishment of an investigation plan and the elaboration of versions of criminal prosecution or the elimination of negative circumstances.

One of the main conditions for carrying out multiple and complex tasks related to the discovery of the crime of murder is the active, sustained and creative application by criminal prosecution bodies and courts of scientific, tactical and special technical procedures and methods developed by forensic science.

The opinion of the first instance is correct, according to which given the numerous inaccuracies between the forensic documents in the criminal investigation file and, implicitly, the insufficiency of the forensic information provided by them, in relation to the provisions of art. 173 and the following from the Criminal Procedure Code, it was

necessary to perform a forensic expertise by the Institute of Forensic Medicine Craiova[10].

In the following, an analysis of the probative value of forensic acts will be conducted, more precisely of forensic reports and the opinions of the Superior Forensic Commission in the case of crimes against life.

The forensic examination

As is well known, evidence is any element of fact which serves to establish the existence or non-existence of a crime, to identify the person who committed it and to know the circumstances necessary for the fair settlement of the case and which contribute to finding out the truth in criminal proceedings [art. 97 para. (1) of the Romanian Code of Criminal Procedure]. At the same time, according to paragraph (2) of the cited article, the evidence is obtained in criminal proceedings by the following means: statements of the suspect or defendant, statements of the injured party, statements of the civil party or civilly liable party, statements of witnesses, documents, expert reports or finding, minutes, photographs, material evidence, any other means of proof that is not prohibited by law [4].

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10 The first instance established as objectives: 1. depending on the blood infiltrate, the local histological and histochemical changes, to establish the age of the wounds located at the level of the skull, respectively temporally left contusion wound 0.5 cm and 2 median occipital contusion wounds of 1 cm each (more precisely the time elapsed from production to death);

2. if the first lesion, respectively the one located at the left temporal level, of 0.5 cm, occurred on the same date, in the same way and on the same occasion as the two wounds at the occipital level and if the first lesion occurred on another date, to approximate the date and the way of its production;

3. whether the first injury could cause the death of the injured person alone or in connection with the other two (if there is a late death, what is the injury (s) immediately causing death and to what extent the other injuries of a vital nature contributed to the death);

4. if the blows located at the level of the skull, occipital region (2 median occipital contusion wounds of 1 cm) occurred simultaneously or successively;

5. if the possibility is excluded that the first injury or the other two may have occurred by falling / hitting hard bodies, taking into account the intoxication and the weight of the victim;

6. Depending on the position, orientation, size, depth and severity of the lesions in the head area, to establish the physical particularities of the vulnerable object/body thanato-generator (stone, iron, wood, blunt, with edge or geometric shape, or with several areas of action);

7. if the injuries to the head occurred by hitting with hard bodies, to establish the position of the victim / aggressor at the time of the attack, the distance and direction of impact, if the 3 injuries were caused by acceleration or deceleration (active or defensive character) and yes if they have produced backlash injuries;

8. establishing the direction / orientation on the surface of the body of the body of the injuries identified on the body of the victim (excoriations, bloodshed) and the defendant, based on these data to establish whether there was a fight between the two (taking into account the expert report genetic) and if the injuries identified on the victim's body are aggression injuries, and those on the defendant's body are self-defense injuries from the victim and at the same time to specify the mode of production and their date;

9. depending on the cadaveric phenomena and the conditions of finding the corpse found to specify whether the position of the corpse was changed or was permanently lying on its back;

10. if the amount of cloudy brown liquid found in the abdominal cavity may be alcohol swallowed by the victim and if so what kind of drink (brandy, wine, beer);

11. if the lesions located at the level of the victim's genitals can date from December 21, 22, 2018 or another date;

12. depending on all the data of the investigation so far (including body temperature, cadaveric phenomena and the conditions of finding the body), to establish approximately the time of the victim's death;

13. on the basis of all medical documents and data, explain the death of the victim and which are the medical facts that support the thesis, as well as the medical facts that support the opposite thesis (hitting with hard bodies or falling and hitting hard bodies.

Among the means of evidence expressly provided by the Code of Criminal Procedure are also the expert reports. The performance of an expertise is ordered when, in order to ascertain, clarify or evaluate some facts or circumstances that are important for finding out the truth in question, the opinion of an expert is also necessary.

Depending on its purpose, there are several types of expertise, including forensic expertise. The regime of these forensic examinations is regulated by the Government Ordinance no. 1/2000 regarding the organization of the activity and the functioning of the forensic medicine institutions, approved by the Government Decision no. 774/2000. Carrying out a forensic examination is ordered on living persons, corpses, biological products and criminal bodies, in order to establish the truth in cases concerning crimes against life, bodily integrity and health of persons or in other situations provided by law.

These expert reports are performed within the forensic health institutions and other structures with attributions in the field of forensic medicine, subordinated to the Ministry of Health, respectively: forensic practices, county forensic services, forensic institutes.

If the judicial body that ordered the forensic examination finds that a forensic examination is incomplete, it may order either the hearing of the forensic doctor who performed the expertise, or a supplement to the forensic examination, or, as in the case under discussion, a new forensic report. by the higher institution.

In our case, then new forensic report that the thanatogenerative lesions are represented by the temporal wound and the two occipital wounds, which caused intracranial hemorrhage, that the occipital plagued wounds most likely occurred by elongated hard body impact with irregular surfaces, but and that the absence of backlash injuries suggests that cranial wounds were most likely caused by the active mechanism (after studying the photographic material no blood stains were observed leading to the passive mechanism, respectively fall, although this cannot be ruled out with certainty).

However, the investigation materialized in the forensic act cannot and must not establish the guilt of the defendant in causing the injuries that caused the death - he can guide the judicial body in the early stages of the investigation, strengthen or eliminate versions of the investigation, reaching later to a categorical syllogism devoid of errors by means of apodictic or dialectical reasoning, inductive or deductive - and the doubt as to the circumstances of its occurrence benefits the defendant. As the second expertise was

performed on the basis of documents and images, without a corpse, it has a lower reliability[11], knowing that, the dead speak

On the other hand, the scientific impartiality of an expert should not be considered absolute, given that he is not always omnipotent, and the truth can never be accepted without a critical evaluation and a convincing demonstration. Or, the latter is missing from this report, considering the answer from objective no. 13 established by the court.

Therefore, such an expertise must be supported, corroborated with other solid evidence to confirm that a person (in this case the defendant) is guilty of a crime, a condition that is not met in the case brought before the court, because, as previously indicated, the other means of evidence invoked by the prosecutor's office either leave strong doubts regarding the commission of the crime of murder by the defendant, or do not confirm such guilt at all.

It is true that in the process of corroborating and evaluating the evidence, the court can establish with certainty a factual situation based on the use of certain syllogisms, but this procedure must be based on certain elements and lead to a reasonable conclusion. Obviously, the retention of a certain state of affairs cannot be based on certain inductions, reasonings, presumptions, insofar as they do not have a certain weight, a character of certainty, which would convince in an adequate way.

The simple presumptions are the conclusions of a logical reasoning by which the court establishes the probability of a factual situation that constitutes the deed in dispute in the criminal case, based on which the examination of typicality of the crime that is the object of the criminal accusation is performed. These facts can be indirectly proven, inferentially, starting from factual situations known to the court on the basis of evidence. In order to make a finding of the commission of the typical deed under the conditions of the standard of proof beyond any reasonable doubt, these simple presumptions must be placed in the vicinity of certainty, and any doubt benefits the defendant.

Opinions issued by the Superior Forensic Commission

In order to establish a real state of affairs and, therefore, in order to find out the

11 The corpse provides evidence of what happened in life, teachings about how death occurred, exclusion from life.

truth, either he or the judiciary, the criminal investigation bodies or the courts may request the approval of the new expert report by the Superior Forensic Commission.

Currently, in Romania, the supreme scientific authority in the field of forensic medicine is the Superior Forensic Commission, which operates under the Institute of Forensic Medicine "Mina Minovici" Bucharest[12]. The mission of this commission is to verify, evaluate, analyze and scientifically approve, at the request of judicial bodies, the content and conclusions of various forensic acts performed by other subordinate public institutions, authorized by law to make findings and expertise. The Superior Forensic Commission may rule, verifying and approving from a scientific point of view, even in situations where new reports have been performed or opinions have been given by the commissions for approval and control of territorially competent forensic acts.

When the Superior Forensic Commission finds the existence of contradictory conclusions between the first and subsequent expertise or other forensic acts, it may approve, in whole or in part, the conclusions of one of them, and may formulate certain clarifications or additions. If the conclusions of the forensic acts cannot be endorsed, the Superior Forensic Commission recommends the total or partial restoration of the works, formulating proposals in this respect or own conclusions [art. 27 para. (1) and para. (2) of the Regulation implementing the Government Ordinance no. 1/20006].

It should be noted that an important effect of the issuance of an opinion by the Superior Forensic Commission is the fact that judicial bodies may not request other forensic examinations by institutions hierarchically subordinate to it, unless new medical data have appeared. or investigation.

Even if it operates with the term of opinion, in which its own conclusions can be formulated by the Superior Forensic Commission and all other forensic acts drawn up by the subordinate institutions can be abolished, neither of the two mentioned normative acts make any reference on the form of the opinions in question, as well as on any mandatory information which it should include. The only normative act containing a definition of these opinions is represented by the Norms regarding the procedure for performing forensic

12 It is composed of several permanent members, namely: the general director and deputy director of the National Institute of Medicine "Mina Minovici" Bucharest, the directors of forensic institutes in university medical centers, the heads of specialized disciplines in accredited faculties within university medical centers, the head of the morpho pathology discipline at the "Carol Davila" University of Medicine in Bucharest and 4 forensic doctors with specialized experience, appointed at the proposal of the general director of the National Institute of Forensic Medicine "Mina Minovici" Bucharest.

examinations and other forensic acts, which, at art. 9 para. (2) lit. e), stipulates that "forensic opinion means the act drawn up by the Superior Forensic Commission, as well as by the commissions for approval and control of medical acts, at the request of the judicial bodies, approving the content and conclusions of forensic acts and it is recommended to carry out new expertise or draw your own conclusions". However, these rules do not provide for the form of these opinions either. In general, G. O. no. 1/2000 refers to the provisions of the Code of Criminal Procedure.

This imperfection of a legislative nature led to the issuance by this commission of opinions that fully maintained the conclusions of previous medical acts (reports of new expertise, as in our case, o.n.), without any explanation and without a concrete objective-scientific analysis of the situation analyzed, notified by the court. The issuance of such opinions also led to the finding by the European Court of Human Rights of the violation of the provisions of art. 2 of the European Convention on Human Rights by the Romanian state[13]. Thus, the Court held that that High Commission did not reproduce the questions to be answered, did not describe the operations to be carried out in its review and did not specify the specific reasons on which it was based in order to reach those conclusions. At the same time, it stated that, in the situation where the obligation to motivate forensic acts fell only to the competent institutions to prepare the first findings and expert reports, and not to the control commissions, this guarantee aimed at strengthening the credibility of opinions and the efficiency of the whole system. forensic expertise is useless because they have the power to completely change the conclusions of subordinate institutions. The Court considered that the obligation to state reasons for scientific advice was all the more important in this case, since the formulation of such an opinion by the supreme national authority in the field prevented lower-ranking institutes from carrying out new expertise and supplementing those already carried out. The same considerations were retained by the European Court of Human Rights in another case which had as its starting point a case settled even by the Gorj County Court[14].

The issuance of such opinions has created problems in judicial practice at the national level. Thus, there were situations in which the criminal investigation bodies or

13 Case Eugenia Lazăr v. Romania, Judgement no.32146/05 from the 16th of February 2010, par.83-84.
14 Case Baldovin v. Romania, Judgement no. 11385/05 from the 7th of June 2011.

even the courts (as in the case of the Craiova Court of Appeal) offered the higher probative value to this opinion, motivated by the fact that this document was issued by the highest form of authority. forensic expertise.

Such an approach of the court of last degree of jurisdiction, which became possible as a result of the national legislation on forensic expertise, is contrary to the procedural obligation implicitly included in art. Article 2 of the Convention, which requires the national authorities to take measures to ensure that evidence is obtained which provides a complete and accurate account of the facts and an objective analysis of the clinical findings, in particular the cause of death. Given the contradictory opinions issued by forensic institutions, as well as the laconic way in which the higher commission was limited, in the last resort, to endorsing previous conclusions, a new expertise or a supplement of expertise seemed useful to clarify aspects of the cause of death of R. M.

Other criminal prosecution bodies and courts have reasonably removed the conclusions of these opinions, considering the provisions of art. 103 Criminal Procedure Code, which enshrines the principle of free assessment of evidence.

Some courts - as in the case of the one that ruled in the first instance, the commented judgment - have implicitly removed them, for reasons of "own technique and tactics" probably anticipating the criticism that "the judge is not it is allowed to remove an expert paper prepared by the 12 most famous doctors in Romania”. Proceeding in this way, the courts choose as the basis of the acquittal, the one provided by art. 16 para. (1) lit. c) of the Code of Criminal Procedure[15], that is, the lack of evidence.

In agreement with these courts, these opinions issued by the supreme authority on forensic expertise do not have a higher probative value than the other scientific evidence administered in the case. Thus, the judicial bodies may keep motivated any of the conclusions of the expert reports carried out in the case, regardless of whether or not they have been endorsed by the Superior Forensic Commission and implicitly to remove this opinion. These opinions are legally based on the provisions of art. 103 para. (1) Criminal Procedure Code, According to which the evidence does not have a value previously established by law and is subject to the free assessment of the judicial bodies

15 Seen from the outside, of course, in relation to the evidence in question - including genetic expertise - the most appropriate solution in this case was to acquit the defendant on the grounds that the deed did not exist.

following the evaluation of all the evidence administered in the case. It follows from the text of the aforementioned law that the assessment of evidence in criminal proceedings is governed by the principle of free assessment of evidence, a principle according to which the judiciary has the right to freely assess both the value of each piece of evidence in which they were administered, as well as their credibility; the evidence does not have an a priori value established by the legislator, their importance resulting from their assessment by the judicial bodies following the analysis of all the evidence material administered legally and loyally in question.

At the same time, as shown above, there are situations in which these opinions issued by the Forensic Commission are sibylline / unmotivated, without an objective-scientific analysis of the situation on which it must rule and without a concrete motivation of the conclusions. That being the case, all the more so, the judicial bodies have the obligation to assess in concrete terms the scientific value of each medical act performed in the case. Only a detailed, scientifically proven report, containing a reasoned solution in relation to possible contradictions between other acts issued by lower-ranking institutions and answering in detail and reasoned all questions asked by the judiciary, is likely to be used as evidence in criminal proceedings [16].

It is a legal truism that any irregularity in the investigation which weakens its ability to establish the cause of death or liability risks leading to the conclusion that it does not meet this standard [17].

Of course, based on the principle of free assessment of evidence governing criminal proceedings in Romania, the courts may reject evidence that does not seem credible or conclusive. However, such a possibility remains purely theoretical if courts are prohibited from conducting an examination outside the network of forensic institutes authorized by law and whose opinions are the only ones admissible as evidence in criminal proceedings, or ask these institutions to reconsider their conclusions if they seem incomplete or insufficiently clear to allow them a clear choice and help them make a

16 The jurisprudence of the European Court of Human Rights also supports this opinion. Thus, in the case of Eugenia Lazăr v. Romania, in paragraphs 77-80, the European court held that,, The court of last instance relied on the opinion of the High Commission - although the judges considered it incomplete and requested a new opinion - on the grounds that this document had been issued by the highest national authority on medical expertise and that, in the circumstances of the case, this was prevented by the special law governing the activity of forensic institutions to carry out a new expertise in the absence of new elements."

17 M*utatis mutandis*, Slimani v. France, no. 57671/00, point 32, CEDO 2004-IX (fragments), McKerr v United Kingdom no. 28883/95, point 113, CEDO 2001-111 and Paul and Audrey Edwards.

decision. However, the case presented does not represent an isolated situation and reflects a current practice of the Institute of Forensic Medicine "Mina Minovici", which consists in evading the requests addressed to it by the judicial authorities in order to obtain the information they need. to make objectively informed decisions in full knowledge of the facts.

In agreement with the European Court of Justice, the mere existence, in national law, of the provisions authorizing the competent forensic institutions to issue opinions which circumvent the requests of the judicial authorities and thus refuse to cooperate with them whenever the needs of the investigation so require. it is in line with the main duty of the state to guarantee the right to life, by establishing an efficient legal and administrative framework, which would allow the establishment of the cause of death of an individual.

At the end of the analysis, one can concludee that the Romanian state has not fulfilled its positive obligation to amend the legislative framework in accordance with the requirements of the jurisprudence of the European Court of Human Rights, the legislation applicable in these cases being the same today.

Conclusions

The existence of a legal framework in the field of forensic expertise, likely to allow the issuance of opinions by the supreme scientific authority in the field of forensic medicine, to circumvent the requests of courts and to refuse to cooperate with them, whenever the needs of the investigation impose, it may lead to situations in which the clarification or assessment of certain facts or circumstances that are important to find out the truth becomes impossible, thus diverting the criminal proceedings from its purpose, respectively that any person who committed a crime be punished according to his guilt; no innocent person shall be held criminally liable.

Thus, the normative acts that regulate the activity of forensic medicine should stipulate what form the opinions issued by the highest national authority on forensic expertise should take and what should be their concrete content, precisely for so that the judiciary can make a clear choice in assessing the evidence and to help them make the right decision.

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