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The Authority of Expertise in Criminal Law

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Abstract: Throughout human history, crime has never hesitated to take advantage of advancements, benefiting from all the discoveries of science that the human mind has developed. This has made it constantly capable of confronting various methods of combating it. Criminals themselves are never reluctant to use scientific means that enable them to perform better in their criminal endeavors, whether by innovating new types of crimes or merely ensuring more advanced ways to commit traditional crimes and conceal the evidence resulting from them. Therefore, it has become essential to utilize scientific and technical methods revealed by modern science in proving crimes and attributing them to their perpetrators, including expertise, which is considered scientific proof that the judge relies on to substantiate his conviction in the verdict. This conviction is the decisive stage that determines the final outcome of a criminal case, distinguishing between guilt and innocence, either by achieving certainty for the judge to rule a conviction or by tipping the balance of doubt to rule acquittal.

Keywords: *Authority of Evidence; Expertise; Criminal Law.*

Introduction:

The role of the criminal judge differs from that of the civil judge, whose task is limited to merely evaluating the evidence presented by the parties and weighing some pieces of evidence over others. The criminal judge, on the other hand, takes an active role in the search for the truth by any lawful means. Thus, Article 212 of the Criminal Procedure Code states that crimes can be proven by any method of evidence, except in cases where the law stipulates otherwise. The judge may issue a ruling based on their personal conviction. Furthermore, the scope of criminal evidence is not limited to expertise presented solely before the trial judges; it also extends to various investigative authorities, as outlined in Articles 143 to 156 of the Criminal Procedure Code. These articles regulate the use of expertise in criminal matters, where resorting to it is optional for the judiciary and is not subject to review by the Supreme Court, provided that any refusal, when requested by one of the parties, is justified. Due to its importance and frequent use by the judiciary, we have sought to address this topic.

First Section: The Authority of Criminal Expertise

Expertise, as a means of proof, is placed on the same level as other means of evidence. Therefore, the court may request the expert to appear in court to explain the results of the expertise, and it may also ask the expert any questions that fall within the technical scope of the task assigned to them. The court has the discretion to either adopt or disregard the expertise if it finds it unhelpful. Judges act according to their personal conviction and their assessment of whether the expertise is thorough, reliable, and has adequately addressed all the issues related to the case in a clear and precise manner.

Subsection 1: The Evidentiary Value of Expertise

The reports prepared by experts must follow the form and specifications outlined by the judge. The expert prepares the report while carrying out their duties, based on what they have personally observed, seen, and heard. According to Article 215 of the Criminal Procedure Code, these reports serve only as guidance to the court since the expert’s opinion is always advisory and not binding. It is not a judgment and holds no greater legal value than the testimony of witnesses. It does not prevent the judge from exercising full discretion in evaluating the facts presented. As such, the judge has the right to exclude the expertise or order additional expertise if the report is incomplete or insufficient. The parties involved also have the right to request supplementary expertise after reviewing the results of the investigation. If the judge relies on an expert report, they must present it to the parties for discussion, as the court's reliance on it without giving the interested party the opportunity to respond would invalidate the ruling. The parties must be given time to submit their observations or make requests, such as conducting supplementary expertise in a specific area or requesting

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a counter-expertise, as provided by Article 154 of the Criminal Procedure Code.[1]

Moreover, if the judge is not convinced by the expert's report, they may disregard the expertise or part of it, provided that their ruling is logically and reasonably justified.

Subsection 2: The Judge's Authority in Evaluating Expertise

Article 219 of the Criminal Procedure Code stipulates that if the judicial authority deems it necessary to conduct an expertise, it must follow the procedures outlined in Articles 143 to 156 of the Criminal Procedure Code.

Thus, the judge has absolute authority to resort to expertise if they consider it necessary, according to their discretion, provided that the legal provisions regarding expertise are followed. This makes expertise an optional method, granting the judge complete freedom to either accept or reject the expert's opinion. The judge may adopt what they find convincing and dismiss what they do not, as long as they provide a reasonable and logical explanation for their decision.

If multiple experts are appointed and their opinions conflict on the same issue, the judge will adopt the opinion that convinces them and aligns with the evidence presented in the case. The judge may also rely on the expert's report on an issue that was not specifically requested, as the expert's duty during their experiments and technical work is to record everything that helps reveal the truth, not only based on the assigned task, but also to inform the relevant authorities of anything that contributes to the truth in criminal matters. The court evaluates the evidence obtained through this process in the same manner it evaluates other types of evidence.

It should be noted, however, that the judge cannot reject a forensic medical report concerning the cause and time of death or the determination of partial or total disability of the victim, unless there is a counter-expertise, as these are purely technical matters beyond the judge's competence. This principle was confirmed by the Supreme Judicial Council in its decision dated 11/05/1982, published in the Judges' Bulletin No. 3, July 1986, which states: "The determination of disability estimated by doctors is a technical process outside the scope of judicial work, and it cannot be altered or reduced except through another medical expert."

As for the compensation for the disability estimated in the expertise, it is left to the judge's discretion, who may adjust it if they deem it excessive, reducing it to a reasonable level, except in cases of compensation for damages resulting from traffic accidents, which are subject to Law 88-31 [2].

Subsection 3: Appealing Criminal Expertise

The investigating judge may refuse to conduct a counter-expertise or an additional expertise, provided that such refusal is justified. However, the parties retain the right to appeal this decision before the Chamber of Accusation, which will review and assess the reason for the refusal. If the chamber finds the reason insufficient and unjustifiable, it may order further investigation to conduct a counter or additional expertise.

At the trial level, particularly in cases involving traffic accidents, a counter-expertise may be conducted to assess the damages inflicted on the victim's vehicle if the initial expert report leads to an excessively high compensation. This also applies to misdemeanor courts when the injury caused by assault leads to a work incapacity exceeding fifteen days, or in felony courts when dealing with a counter mental and psychological expertise. The parties have the right to request additional or counter expertise, but the final decision on whether to accept or reject such requests rests with the court, which must provide a reasoned justification for its decision.

It is important to note that it is not possible to appeal a judgment or decision of the highest court concerning the ordering of medical expertise. This principle was confirmed by a Supreme Court decision dated 04/07/1983, published in the Judicial Magazine, Issue No. 01. The decision stated that when the law defines the nature of the judicial decisions subject to appeal before the Supreme Court, it includes only judgments and decisions made at the highest level or those involving independent rulings on jurisdiction. Not all decisions are appealable, and a decision appointing an expert to conduct a medical examination on a victim in an intentional assault case is considered an interim decision and not subject to appeal, as it is not among the decisions listed in Article 495 of the Criminal Procedure Code.

Second Section: The Effects of Criminal Expertise

Once the expert completes their tasks, they present the results of their research through a comprehensive report. This report summarizes the findings of their work. So, what is the form and content of this report? When can it be considered invalid, and to what extent is the expert responsible for their obligations?

Subsection 1: The Expertise Report

When the expertise tasks are completed, the experts must prepare a report that includes a description of the actions they performed and the results achieved. According to Article 153 of the Criminal Procedure

Code, the experts are required to personally testify to the execution of the tasks entrusted to them and sign their report. This report must be detailed and cover all matters and data related to the execution of their work, allowing the judge and the parties involved to review the various procedures and results, and discuss the findings included in the report. [3]

Once the expert submits their report, the investigating judge is responsible for summoning the parties to review the expert's findings and to hear their statements regarding the report. The judge also grants them a deadline to provide their observations, including requests for additional or counter-expertise. The judge, the prosecution, or the parties may direct questions to the expert that pertain to their assigned task.

The expert report generally includes the following sections:

A- Introduction:

This section helps identify the case under investigation and ensures the correctness and validity of the procedures followed. It includes:

- The judicial authority appointing the expertise
- The date of appointment
- The file or case number
- The names, surnames, and addresses of the parties
- The task assigned to the expert

B- Medical Facts:

This part outlines:

- The condition of the injured party
- A reminder of the reasons for conducting the expertise
- The injuries sustained by the victim, their progression, and treatment duration
- The lasting effects of the injury, if any

C- Treatment:

This section includes details about surgical operations, medication prescribed, the duration of the work incapacity, and the date of recovery. The expert must accurately describe the injuries and wounds, leaving no room for doubt, as any uncertainty is not interpreted in favor of the victim but rather against them. The expert must also establish a clear causal link between the injury and the act committed by the offender, allowing the court to hold the offender responsible for causing the injury.

D- Incapacity or Work Interruption Duration:

The report must mention key elements such as:

- The duration of temporary incapacity for work
- The recovery date
- The percentage of permanent disability

The reasoning provided in the expert report enables the judge to determine appropriate compensation for the victim, taking into account their family, social, and professional circumstances, as well as the losses suffered and the damages incurred.

E- Conclusion:

This section contains the expert's responses to the questions posed by the judges. The answers should be specific, concise, and useful. The expert must avoid addressing matters unrelated to the expertise or beyond their scope of knowledge. The judges will base their decisions on the expertise, according to their personal convictions, depending on whether the report is thorough, covers all relevant issues, and answers them clearly and precisely.

Subsection 2: Invalidity of Expertise

While judicial authorities have full discretion in evaluating expertise and may rely on its results within the technical framework, procedural errors may lead to a judicial penalty, which is invalidity. Invalidity is the consequence imposed by the legislator for violating procedural rules, which impacts the procedural act and threatens its legal effects. [4]

Refusing to appoint an expert may invalidate the trial, particularly when it involves the parties' right to prove or refute the accusation. The parties have the right to request the appointment of an expert to examine any technical matter, as expertise is a commonly accepted method of evidence in criminal cases. However, the court is not bound by it. The court can decline to appoint an expert if the evidence already presented is sufficient for a decision without requiring expertise.

In this context, the failure to grant a defense request, whether it involves appointing an expert or summoning the appointed expert for a discussion of their report, may constitute a violation of the defense's rights. Requesting the appointment of an expert to support a fundamental defense is a general request related to the investigation of the case to reveal the truth. The court must either grant such a request or justify its rejection with valid and serious reasons; otherwise, the judgment may be considered deficient in its reasoning and necessary justification. Similarly, if the defendant requests the summoning of a forensic doctor for discussion on a

technical matter, the court cannot reject this request and decide on the matter without further examination, as this would violate the defendant's right to defense.

However, expertise is considered invalid if conducted by an expert who has been stripped of their civil rights. If an expert violates the rules imposed on their work, their expertise becomes void. In such cases, the judge must dismiss the expert and appoint a new one. Article 157 of the Criminal Procedure Code lists instances where expertise may be invalid.

The first instance concerns the interrogation of defendants, and the second relates to the hearing of the civil party. Additionally, another instance not mentioned in Article 157 is that an individual deprived of civil rights cannot be appointed as an expert. Expertise lacking accuracy in its task or conducted by individuals other than those appointed by the judge is also considered invalid. However, a delay by the expert in submitting the report is not a reason for invalidating the expertise, as the delay can be rectified. The expert remains responsible for failing to submit the report on time, which could lead to disciplinary action, but procedural invalidity does not necessarily follow from such delays.

According to judicial precedent, the invalidity of expertise does not invalidate the entire proceedings. As stated: "An invalid procedure does not corrupt the entirety of proceedings where the invalid procedure is only one element that the court can exclude. If an expertise is declared invalid, it is removed from the investigation file and placed in the registry, marked as 'excluded from discussion.'"

Failure to notify the parties of the expertise results is another reason for the invalidity of the expertise, in accordance with Article 154 of the Criminal Procedure Code, which stipulates: "The investigating judge must summon the concerned parties and inform them of the experts' conclusions in accordance with the procedures outlined in Articles 105 and 106. The judge must receive their statements regarding the expertise and set a deadline for them to submit their observations or requests, particularly concerning supplementary expertise or counter-expertise. If the judge rejects these requests, they must issue a reasoned decision." [5]

Subsection 3: Expert Responsibility

A- Civil and Criminal Responsibility of Experts

While judges are not bound by the opinions of experts, the results of their work can have a decisive impact on the judgments rendered. Therefore, the Algerian legislator has emphasized the responsibility of experts, considering them as key witnesses in their expertise reports. If they fail to fulfill their obligations, experts may face criminal penalties for misdemeanors. According to Executive Decree No. 95-310, which regulates the conditions and procedures for registration in the lists of judicial experts, as well as their rights and duties, Article 17 stipulates that: "An expert who provides a false opinion or confirms facts that they know to be untrue is subject to the penalties provided for in Article 238 of the Penal Code."

Referring to Article 238 of the Penal Code, it states: "An expert appointed by judicial authorities who provides a false opinion, either orally or in writing, or confirms facts that they know to be untrue, in any stage of the proceedings, shall be subject to the penalties prescribed for perjury according to the classification outlined in Articles 232 to 235."

These articles classify perjury based on whether it occurs in criminal, misdemeanor, or civil and administrative matters.

Perjury in criminal cases is punishable by imprisonment ranging from five to ten years. If the false witness receives money, rewards, or promises in return for their perjury, the punishment increases to ten to twenty years of imprisonment.

In misdemeanor cases, the false witness is punished with imprisonment ranging from two to five years and a fine between 20,000 and 100,000 Algerian dinars (DZD). If the false witness receives money, rewards, or promises, the punishment can be increased to ten years, and the maximum fine can reach 100,000 DZD.

If perjury occurs in minor offense cases, the punishment is imprisonment of at least one year and up to three years, along with a fine ranging from 20,000 to 100,000 Algerian dinars (DZD). If the witness receives money, rewards, or promises, the penalty may increase to imprisonment of two to five years and a fine of up to 100,000 DZD. The same rules apply if the false testimony is related to a civil case connected to a criminal case.

Article 18 stipulates that an expert who discloses secrets learned during their work is subject to the penalties outlined in Article 302 of the Penal Code. Article 302 states: "Anyone who, in any capacity, works at an institution and provides or attempts to provide secrets of that institution to foreigners or Algerians residing in foreign countries without authorization shall be punished with imprisonment from two to five years and a fine ranging from 20,000 to 100,000 DZD."

If these secrets are disclosed to Algerians residing in Algeria, the punishment is imprisonment from three months to two years and a fine of 20,000 to 100,000

DZD. The maximum penalty must be applied if the secrets pertain to the production of weapons or military ammunition owned by the state.

In all cases, the court may impose additional penalties, such as the deprivation of one or more rights mentioned in Article 14 of the Penal Code, for a period of at least one year and up to five years.

From this, we can conclude that an expert who discloses professional secrets is punished by imprisonment from two to five years if the information is shared with persons outside the country, or from three months to two years if shared with Algerians residing within Algeria. In both cases, fines ranging from 20,000 to 100,000 DZD apply, with the possibility of additional penalties as outlined in Article 14 of the Penal Code.

B- Administrative Responsibility of Experts (Disciplinary)

If an expert commits a professional error due to negligence in their duties, this may lead to their removal from the list of exerts. According to Executive Decree No. 95-310, Article 19 outlines disciplinary penalties for any judicial expert who breaches their obligations related to their status and duties. The penalties include: Warning, Reprimand, Suspension for a period not exceeding three years

Permanent removal from the list of experts

These disciplinary actions are applied without prejudice to any potential civil or criminal proceedings.

In the case of a professional error, the Public Prosecutor initiates disciplinary proceedings against the judicial expert, either based on complaints from one of the parties or when sufficient evidence indicates a breach of their obligations. The Public Prosecutor refers the case to the President of the Court, who imposes the penalty or refers the matter to the Minister of Justice after summoning the expert legally, hearing their statements, and confirming the facts attributed to them.

The President of the Court issues the penalties of warning and reprimand and sends a copy of the penalty report to the Minister of Justice. The penalties of removal from the list of judicial experts or suspension are issued by the Minister of Justice based on a reasoned report from the President of the Court.

Conclusion

Resorting to expertise as a scientific method of evidence by judges is optional, as they are not obliged to respond to parties' requests for appointing an expert. Judges may refuse to appoint an expert if they deem that they do not need the expert's opinion or if the truth of the matter requiring expertise has already been established through the case's elements and proceedings. In such instances, they are making a substantive decision that the Supreme Court cannot review, provided that they give a reason for their refusal to appoint an expert. Failing to provide adequate reasoning would render the decision flawed.

Judges also have the authority to dismiss expert reports, and all parties involved in the case have the right to challenge the expertise. However, the law does not clearly address whether an expert can be dismissed or recused. There is no explicit provision in the Criminal Procedure Code regarding this issue. Thus, the question remains whether the provisions of the Civil Procedure Code regarding expert recusal can be applied in criminal cases. This remains an open question.

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