

## VIEW POINT

### EXPERTISE IN BODILY INJURIES IN CRIMINAL PROCEDURE

**Gutevska A., Cakar Z., Duma A., Poposka V.**

*Forensic Medicine and Criminology Institute, Medical Faculty,  
Ss. Cyril and Methodius University, Skopje, R. Macedonia*

**Abstract:** In the day-to-day practice of answering questions from the area of medicine today, there is a growing need for forensic medical expertise in bodily injuries in criminal procedure.

Furthermore, when qualifying a bodily injury, the expert must possess knowledge and experience not only medical, but s/he must also be aware of the legal requirements and norms of the Code of Criminal Procedure and the Criminal Code of R. Macedonia. This will enable the expert to contribute to the explanation and clarification of certain facts and issues relating to the bodily injury. In this paper, by citing Articles 255 and 256 of the Code of Criminal Procedure, it is explained how an expert can be appropriately selected by the court. In addition to this, by citing Article 271 of the aforementioned Code, a way of analysing bodily injuries is defined; and finally, the definition of bodily injuries is explained through citing Articles 130 and 131 of the Criminal Code of R. Macedonia, relating to bodily injury and grave bodily injury.

The aim of this paper is to outline the method of performing this forensic medical expertise, i.e. by whom and when can expertise in bodily injuries be sought and, moreover, what is the legal and ethical responsibility of the expert during the execution of the expertise. Additionally, the steps that the expert should follow when preparing a written statement and opinion on the type of the bodily injury are explained. More specifically, emphasis is placed on the expert's requirements after examination of the injured individual; after revision of the medical documentation during expert assessment of bodily injuries in the case of criminal subjects; and providing oral statements and opinions during the criminal procedure.

**Key words:** selection of expert, expert, expertise in bodily injuries, bodily injury, grave bodily injury.

In the procedure today, for the court's needs, there is a growing need for forensic medical expertise which, being part of the material evidence, provides professional assistance to legal subjects, namely the courts, in solving questions and problems that are closely related to human life and health.

Expertise in bodily injuries to living 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 the court's point of view, expertise in bodily injuries is needed in the case of: criminal acts against the life and the body, which include criminal acts or injuries to the body's integrity and deterioration of health (bodily injury and grave bodily injury); criminal acts against sexual freedom and sexual morals (sexual delicts) and criminal acts against traffic safety (accidents). [12, 19]

Nevertheless, in order to objectively and accurately assess the level and the gravity of the bodily injuries, the expert must be familiar with the law's 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 injury therapy, and must have a full comprehension of expert analysis and examination. In other words, in expertise in bodily injuries, the expert needs to explain and assess the medical facts of the bodily injury and to match this information with the law's regulations and legal rights and norms; to determine the medical characteristics of the bodily injury; explain the medical content of the bodily injury; to establish the consequential relationship between the criminal event and the bodily injury; to determine the potential consequences and complications and to evaluate all other facts such as the time when the bodily injury happened, the means with which it happened, etc., that are related to the bodily 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 Articles 255 and 256, it is precisely explained how the expert is selected by the body that conducts the procedure.

#### Article 255

**(1) The expert is selected from the existing list of experts by the court on the basis of her/his relevant knowledge and experience in a relevant sphere, technical fittedness, professional reputation and other circumstances important for providing objective findings and opinions.**

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

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

**Article 256**

**(1) The provision of expert opinion is set out in a written order from the body conducting the procedure. The order states the factual circumstances regarding which expert opinion is being sought and to whom this is entrusted. The order is also submitted to the parties concerned.**

**(2) If there is a specialist institution or if the providing of expert opinion may be carried out within the framework of an existing state agency, the provision of expert opinion, particularly in more complex cases, is normally entrusted to such an institution or agency. The institution or the agency assigns one or more experts who will provide the expert opinion.**

**(3) When the expert is assigned by the body which is conducting the procedure, then that body will assign an expert or, if the provision of the expert opinion is more complex, two or more experts.**

**(4) If within the court there are no permanently assigned experts for certain kinds of expertise, the court may assign an expert who is not on the list.**

**(5) The court, having previously obtained the opinion from the expert, may set a deadline for the provision of the expert opinion, and that deadline may be extended by the court at the request of the expert.**

From the articles cited above, and more precisely in items (2) and (4), it can be concluded that the body that conducts the procedure, namely the court, determines the expert by subjective decision, i.e. it can select any expert from the existing register of experts, or from any specialist establishment or any expert not on the list, whereas in item (1) of Article 256 it is explained that the provision of expert opinion is decided by written order from the body that regulates the procedure.

Even though, according to the Code of Criminal Procedure of R. Macedonia, the body that is conducting the procedure for the provision of forensic medical expert opinion may decide upon any expert, we consider that most competent in providing expert opinion on bodily injuries to living persons would be an expert who with his/her general medical knowledge and specialist forensic medical knowledge is answerable to the law as well as being able to equate the medical facts with the judicial regulations, thus making a necessary accommodation to the needs of the judicial organs. [9, 10]

The qualification of bodily injuries is a specific procedure agreed on by the Code of Criminal Procedure and the Criminal Code of every country.

In article 271 of the Code of Criminal Procedure of R. Macedonia, the provision of expert opinion on bodily injuries is explained thus:

**Article 271**

**(1) The provision of expert opinion on bodily injuries is regularly performed by an examination of the injured party or, if this is not possible or not**

necessary, on the basis of the medical documentation or of other data in the records.

(2) After the injuries have been accurately described, the expert will give her/his opinion particularly on the kind and the gravity of each separate injury and on their total impact with respect to their nature or to the specific circumstances of the case, the kind of consequences these injuries normally produce and how in the actual case these were produced and by what means and in what way the injuries were inflicted.

In item (1) of this Article it is stated that the giving of expert opinion on bodily injuries can be performed in two manners, i.e. by examination of the injured person or by analysis of the medical documentation and any other information relevant to the injury and congruent with the legal acts on the subject. In item (2) of this Article it is stated that, when giving an opinion on the character of bodily injury, it must be taken into consideration what is the general outcome of such injuries, and what is the result in the specific case. Nevertheless, an injury can have a different outcome depending upon the sex, age, individual traits, etc. Therefore, a single, schematic explanation of bodily injury cannot exist, that is to say that every bodily injury is a case in itself. [5]

In the Criminal Code of R. Macedonia bodily injuries are analysed in two articles: Bodily Injury (Article 130) and Grave Bodily Injury (Article 131):

#### **Bodily Injury Article 130**

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

(2) A person who performs the act as per item 1 in the course of family violence shall be punished with imprisonment of from six months up to three years.

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

(4) The prosecution for the crime as per item 1 is undertaken upon the basis of a private law-suit, but as per item 2 by proposition.

#### **Grave Bodily Injury Article 131**

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

**(2) A person who performs the act as per item 1 in the course of family violence, shall be punished with imprisonment of from one up to five years.**

**(3) A person who gravely injures another bodily, or gravely damages her/his health and if because of this the life of the injured person is brought into danger, or a vital part of the body or some important organ is destroyed, or is permanently damaged, or to a significant extent, or a permanent disability for work in general is caused, or for the work for which s/he has been trained, or her/his health is damaged permanently or gravely, or s/he becomes disfigured, shall be punished with imprisonment of from one to ten years.**

**(4) If because of the grave bodily injury as per items 1–3 the injured person dies, the perpetrator shall be punished with imprisonment of at least one year.**

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

**(6) A person who commits a crime unpremeditatedly, led not by her/his own fault into a state of great irritation by an attack or grave insult by the injured person, shall be punished for the crime as per items 1 and 2 with a fine or with imprisonment of up to three years, and for a crime as per items 3 and 4 with imprisonment of from one to five years.**

From all the cited articles it can be noticed that in art. 130 physical injury is defined as negative as is grave physical injury in items 1 and 2 of article 131, while grave physical injury (qualified as particularly grave physical injury in item 3 art. 131) is defined with qualifying elements. From all the above, it can be concluded that the expert should denote the degree and gravity of the injury according to all the definitions, meaning that the injury in question should be recognized by one of the defined conditions in item 3 art. 131 or by eliminating the previously mentioned qualified elements. [3]

Expert assessment of physical injuries is usually made at the moment they occur, although in some cases it is made after treatment.

Hence, the aim of this paper is to explain the role of the expert through his/her expert assessment of physical injuries to living individuals during criminal investigation or in cases in which a high level of performance by the expert is required, as well as what the actions and responsibilities of the expert while performing the expert assessment are.

One of the responsibilities of the expert in the course of his/her day-to-day work is making an expert assessment of bodily injuries on living individuals in written format. The execution of the expert assessment of physical injuries to living individuals consists of: making a diagnosis of and giving an opinion about the type and the character of the injuries after immediate examination of the injured person and making a diagnosis of and

giving an opinion about the type and character of injuries in expert assessment of physical injuries in the course of criminal investigations.

### **1. Making an expert assessment of the type and character of injuries after immediate examination of an injured person.**

Often the examination of an injured person (a physical examination of the participant injured in the criminal act – or the accused, the defendant) is required by the court by written order (as per items 1 and 2 of Article 256 of the Code of Criminal Procedure of the R. Macedonia) in any phase of a criminal investigation, but they also might be required by the Ministry of Internal Affairs in written form (examination of the injured person who was the victim of a rape, where apart from the standard physical examination, a gynaecological examination is also required) or by the injured person by written order (physical injury of a person injured by family violence). [7, 11, 12, 19] At our Institute, most often, there is an examination of the injured person who was hurt during some incriminating event (a quarrel, fight or rape) in order to determine the existence of injuries sustained during the criminal event, but there are also cases when the examination is conducted on the person accused of the criminal act in order to determine the existence of any fact which might be of great importance in the further course of the criminal investigation.

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

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

- obtaining general information (name and surname, date of birth, place of residence, marital status and occupation);
- obtaining information from the injured person, which concerns the place of the act, the time (the exact date and time) of the occurrence of the injuries, the weapon that was used and the way in which the injuries occurred;
- date and time of the examination conducted;
- examination of the body of the injured person to ascertain the presence of an injury;
- the acknowledgement of every single injury in terms of localization, type and characteristics of the injuries and their combined input drawn in specific sketches or diagrams, and
- taking photographs of every injury.

Depending on the questions set down in the court order or the written order of the Ministry of Internal Affairs, in certain cases there might be required:

– an examination of the clothes for the potential presence of suspicious biological indications (blood, hairs, semen). In the case that such substances are found, laboratory analysis is performed to determine to which blood group, etc. it belongs;

– gynaecological or anal examination by taking a vaginal or anal sample;  
– taking veinous blood for proving any possible presence of ethyl alcohol.

In a case when bodily injuries, for which there is a suspicion that appropriate means need to be used (e.g. a wound that needs cleaning or surgical stitching or broken bone tissue that needs x-rays) are ascertained, then the injuries are analysed again and the injured individual goes to a relevant specialised establishment. Furthermore, if it is concluded that there is no need for hospitalization, the findings from the examination must be delivered to our Institute and, more specifically, to the expert who performed the analysis.

The **second phase** concerns the presentation of the findings and opinions in a written form that consists of the following:

– all information obtained during the examination of the injured individual, i.e. general characteristics of the individual, a description of the event, as well as a detailed description of every injury classified regarding its bodily location, which is performed based on fixed parts of the body and potential characteristics, i.e. if injuries such as bruises, haematomas, contusions are detected, then the form and the size are described while in cases where a wound is detected, the angles, the corners, the depth and the latitude are analysed.

– answers to the questions put in the written order are given in language intelligible to juridical individuals. Additionally, the questions asked usually concern an opinion on the type and the character of every separate injury and their combined result (qualification of the bodily injury in agreement with the regulations set in the Criminal Code of R. Macedonia). In certain cases, however, there is also call for an 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 patterns that the observed injuries present, photographs of every injury and every laboratory analysis. Everything mentioned above is material evidence in the criminal procedure.

## **2. Providing findings and opinions on the type and the character of injuries during expert assessment of bodily injuries based on medical documentation**

Expert assessment of bodily injuries in criminal cases is always performed following a written court order (explained in items 1 and 2 of Article 256

of the Code of Criminal Procedure) at any stage in the criminal procedure, while the head of the special establishment, i.e. the Forensic Medicine and Criminology Institute that received the written order together with the criminal case, determines the expert or the number of experts (usually there are two or three experts depending on the case) who will conduct the expert assessment.

Furthermore, the execution of an expert assessment of bodily injuries in criminal cases consists of three phases.

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

Furthermore, the **second phase** is concerned with examination of the injured so as to submit any additional medical documentation that has not been included in the case and additional examination is performed. In other words, in this phase, the medical documentation is totally completed (e.g. for injury to bone tissue an x-ray is required, for certain potential consequences medical notes from other examinations are needed, etc.) and an examination is carried out in the case of any complication or scar.

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

– in the finding the complete medical documentation should be cited (medical documents, medical history of illness from 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 any witnesses, and findings from other expert assessments 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 their combined effect. More precisely, the injury is explained through the qualifying elements clarified in item 3 of Article 131 of the Criminal Code. Additionally, the juridical individual – the judge – should recognize whether it is a case of bodily

injury – Article 130 – or grave body injury – Article 131 of the Criminal Code of R. Macedonia. In cases where there is a lack of necessary facts, the opinion cannot be concluded with absolute assurance, hence phrases such as "we cannot overlook the possibility that...", "there is a great probability that..." (e.g. if, in the cited medical documentation, there is no detailed description of the injuries concerning their location, or the type or only the Latin diagnosis is mentioned, the time, the means or the way the injury happened 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 an outcome of the injury).

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

Experts can also be summoned to court to give a supplementary opinion on a previous expert assessment in cases where certain facts need to be further clarified or explained; when questions that were not previously asked should be answered, when an expert opinion by another expert that is contradictory exists, or when the expert opinion is not in favour of any of the parties.

Finally, an expert's obligations consist of the following: s/he should not participate in an explication of legal questions and questions regarding guilt, s/he should provide answers to questions asked by the judge or the parties but only those concerning medical issues; if questions regarding new facts are raised then the expert can ask for a certain period of time in order to provide an opinion, and s/he can ask questions of the parties, the answer to which would be one of the important facts for determining the juridical truth of the expert assessment.

### *Conclusion*

An expert assessment of bodily injuries provided by an appropriately chosen expert determined by the court has a high possibility of being accurate and objective, and is part of the significant material evidence in the juridical procedure and moreover it leads to a proper and timely bringing of a judicial verdict.

## REFERENCES

1. Boskovski K. (1994): *Ekspertus*, Nezavisni izdanija „Djurdja“, Ohrid, 15–29.
2. Duma A. et al. (2000): „Neophodnost od eticko-profesionalna ili strucna podobnost na vestoto lice“, *Makedonska revija za kazneno pravo i kriminologija*; god. 7 br. 1–2, 291–296.
3. Duma A. (2000): „Sudskata medicina i medicinskata etika“, Priracnik za lekari, *Sovremena dijagnostika i terapija vo medicinata*; Glava XXIX, Skopje, 2102–2149.
4. Gutevska A., Davceva N., Cakar Z., Poposka V., Boskovski K., Duma A.: (2000): „Vestacenje na telesni povredi“, *Policijata, obvinitelstvoto, sudot i advokaturata vo predkrivicnata postapka*; Ohrid, 423–429.
5. Gutevski N. (1981): „Vestacenje na telesni povredi vo periodot od 1975–1980“, *Zbornik na trudovi na XI sobir na Zdruzenieto na sudska medicina na Jugoslavija*; Krusevo, 17–34.
6. Janeska B. (1998): „Sudsko-medicinsko vesto lice i negov izbor“, *Makedonska revija za kazneno pravo i kriminologija*, god. 5, br. 1, 341–345.
7. Jovanovic R. (1978): *Sudsko-medicinsko vestacenje (opsta nacela)*; Naucni podmladak, Nis, 7–83.
8. Krivicen zakonik na Republika Makedonija i registar na poimi, (2004): *Sluzben vesnik na RM*; br. 19/04 od 30.03.2004, Skopje.
9. Lukic M., Pejakovic S. (1981): „Nesto o organizaciji sudsko-medicinskog vestacenja telesnih povreda u krivicnom postupku“, *Zbornik na trudovi na XI strucen sobir na Zdruzenieto na sudska medicina na Jugoslavija*; Krusevo, 39–44.
10. Otasevic V. (1997): „Sudsko-medicinski vjestak na raskrscima“, *Prosveta*; Nis, 15–52.
11. Pejakovic S. (1973): „Nacela sudsko-medicinskog vestacenja“, *Sudsko-medicinski komentar Krivicnog zakonika*, „Naucna knjiga“ Beograd, 5–53.
12. Pejakovic S. (1991): *Sudsko-medicinska ekspertiza i lekarska greska pred drustvom i sudom*, „Naucna knjiga“ Beograd, 22–69.
13. Radanov S. (1997): *Sdebna medicina i medicinska deontologija*, „Bolid“ EOOD, Sofia, 228–240.
14. Smoljaninova V.M. (1982): *Sudebna medicina*, *Medicina*, Moskva, 317–328.
15. Statut na Lekarskata komora, (1994): *Kodeks na medicinska deontologija*; Skopje.
16. Tasic Milos et al. (2007): *Sudsko medicina*, „Zmaj“, Novi Sad, 221–230.
17. Veljkovic S. et al.: (1981): „Kvalifikacija telesnih povreda u predmetima sudsko-medicinskih odbora“, *Zbornik na trudovi na XI strucen sobir na Zdruzenieto na sudska medicina na Jugoslavija*, Krusevo, 47–50.

18. Zakon za krivicnata postapka, (2005): objaven vo *Sluzben vesnik na RM*; br. 15 od 7.03.2005 godina.

19. Zecevic D., Krapac D, Palmovic V., Strinovic D., Separovic Z., Skovic Z. (1985): *Vjestacenje tezine tjelesnih ozljeda u krivicnom postupku*; Zagreb, 3–48.

### Резиме

## ЕКСПЕРТИЗА НА ТЕЛЕСНИ ПОВРЕДИ ВО КРИВИЧНАТА ПОСТАПКА

Гутевска А., Чакар З., Дума А., Попоска В.

*Институт за судска медицина и криминалистика,  
Медицински факултет, Универзитет Св. Кирил и Методиј,  
Скопје, Р. Македонија*

Апстракт: Во секојдневната судска практика во разјаснување и разрешување на низа прашања од областа на медицината, денес е сè поголема потребата од судско-медицински вештачења на телесни повреди во кривичната постапка.

При квалификација на телесна повреда вештото лице-лекарот мора да има не само посебно стручно знаење и искуство од областа на медицината, туку е потребно да ги познава законските одредби и правни норми од Законот за кривична постапка и Кривичниот законик на Република Македонија, а сето тоа со цел да помогне на судот во утврдување, оценување и разјаснување на одредени факти и прашања поврзани со телесната повреда. Во трудот преку цитирање на членовите 255 и 256 од Законот за кривична постапка дадено е толкување за начинот на избор на вештак од страна на судот кој ја води постапката, кој избор е слободен, преку цитирање на членот 271 од истиот Закон дадено е толкување и објаснување на начинот на вештачење на телесни повреди, а дефинирањето на телесните повреди е дадено преку цитирање на член 130 и член 131 од Кривичниот законик кои се однесуваат на телесна повреда и тешка телесна повреда.

Целта на овој труд е да обрнеме посебно внимание за начинот на изведување на овие вештачења, односно кога и кој може да го бара вештачењето на телесни повреди и во што се состои етичката и правната одговорност на судско-медицинскиот вештак при изведување на овие вештачења. Поточно, наведени и објаснети се постапките на судско-медицинскиот вештак при изготвување на писмен наод и мислење за видот и карактерот на телесните повреди, и тоа: по непосреден преглед над повреденото лице, по увид во медицинската документација при вештачење на телесни повреди во

кривични предмети и при давањето на усмен наод и мислење во текот на судската постапка.

**Клучни зборови:** избор на вештак, вештак, вештачење на телесни повреди, телесна повреда, тешка телесна повреда.

**Corresponding Author:**

**Gutevska Aleksandra**  
**Forensic Medicine and Criminology Institute**  
**Medical Faculty**  
**Vodnjanska 19**  
**1000 Skopje, R. Macedonia**  
**Tel: + 389 2 3177 044**

**E-mail: gutevska@yahoo.com**