

## SOME PROBLEMS IN THE REFORM OF EXPERT INSTITUTIONS IN LITHUANIA

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**ABSTRACT:** The history of the Republic of Lithuania is divided into three periods: independent Republic (1918–1940), soviet times (1940–1990), the period after the restoration of independence (since 1990). Based on the three periods the development of expert institutions in Lithuania is overviewed and topical problems are disclosed. Activities of expert institutions during the last decade and emerging problems are being analysed most widely. The state of forensic expert institutions is also given. Presently there are following expert institutions in Lithuania: The Institute of Forensic Examination by the Ministry of Justice, the office of Criminalistic Examination by the Criminal Police, State forensic and narcological service by the Ministry of Healthcare, association of goods examination.

Problems of forensic examination in the Republic of Lithuania are analysed in three ways:

- improvement of expert institutions in Lithuania,
- amendments of the legal basis,
- preparation of experts and qualification upgrading.

The model of system of forensic institutions is provided.

Laws regulating expert activities are analysed and suggestions on how to improve these laws are made. Recently drafts of the Code of Criminal Procedure and the law on forensic examination have been prepared. Regulations changing the place of examination in the criminal procedure are also analysed.

The present system of expert preparation is analysed and an original model of expert preparation is presented.

The article provides opinion regarding development of expert institutions including private research.

**KEY WORDS:** Expert institutions; Forensic examination; Criminal procedure.

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It is impossible to define one or some problems, that are of particular importance estimating the criminal situation in Lithuania. We register the significant increase of crimes and relatively a low rate of crime detection.

The activity of expert institutions has been of great importance in crime investigation. Since 1990 when the independence of Lithuania was restored, the reform of the legal system including the expert institutions has been pro-

ceeding. The problems in reforming the of expert institutions has been often under the discussion [5].

In spite of the fact that a new edition of the Outline of legal system reform has been approved, it should be noted, that the second stage of the reform proceeds rather slowly. Qualitative changes are especially missing in the reform of expert institutions. The discussions in the legal society concerning the very regulations of the reform of expert institutions: in “Expert institutions” of “the Outline” it has been specified that “the Ministry of the Interior Affairs (IMA) Department of Criminalistic Expertise has been substituted; it has become a subunit of united police system, and its status is defined by the Police law, the Criminal Process Code and other legal acts. The unit of Criminalistic Expertise executes the methodic guidance and provides hardware, qualifies specialists; experts territorial units and specialists (experts, criminalists-technicians) merges the police units specialised by branches. Their functions include the examination of the scene of the crime, the search and investigation of the material evidences. The results-conclusions of the investigation are provided as the evidences. In the case of more complicated investigation, it may be accomplished in the Central Criminalistic laboratory” [17].

The statement contradicts another statement of the same “Outline”, which defines the universal functions of the police.

Furthermore, the “Outline” states: “(...) the commitment of the expertise that is assigned by the court in criminal and civil cases must be accomplished by Lithuanian Forensic Expertise Institute and other persons” [17].

The statement provokes the question whether the court has the right to assign the expertise to be investigated by the specialist of the IMA Expertise? The positive answer means the principal alteration of the expertise. Is the foreseen alteration scientifically based? Will the reform help to clear and investigate the crimes? Are there any institutional interests in the reform of the expertise institutions?

The following analysis of the “Outlines” shows a modern “interesting” classification of expertise according to their complication: investigations, complicated investigations and expertise. All expertise must be executed by the territorial units of the IMA, the Central Criminalistic Laboratory and Lithuanian Forensic Expertise Institute. We maintain such a classification to be scientifically ungrounded, as any classification of the expertise according to their complication and the significance of some defined stages of the execution are at any rate subjective and harmful to the crime investigation. We suggest the selection of specialists for the investigation to correspond their qualification (skills and knowledge) in a particular area, their modern object investigation acquisition and the possession of the required equipment.

The examples above prove that the concept of the reform of expertise institutions is missing in this “Outlines”, and the strategy of the criminal system reform in particular. The program should define final and intermediate objectives, their tasks, the combination of hardware and people necessary to accomplish the investigation, possible variants of the expansion and development. The structure should be defined in detail to avoid the duplication of the functions and some departmental treatment in the case of self-reform.

Let us analyse the historical background and their basic functions of Lithuania expertise institutions.

The Criminalistic Expertise service in Lithuania (also in Lithuania between two World Wars) was subordinated to the Ministry of the Interior, but in 1961 the Forensic Expertise Institute was founded and belonged to the Ministry of Justice.

The foundation was accompanied by some kind of competition between the Ministry of the Interior and the Ministry of Justice. Such kind of competition was not typical for the state structures in an authoritarian state. Furthermore, it was some phenomenon of democracy. We suppose, that the structure of criminal process based on competition is necessary for any democratic country, but the functions should be strictly defined. Despite the numerous specifications of the Forensic Expertise Institute’s trend of work in some development stages, the main purpose was the application of science and technique achievements in the work of the court, prosecuting magistracy and the inquiry institutions, i. e. the aim corresponds to the task of the IMA Criminalistic Expertise Service.

The objectives of the Forensic Expertise Institute are discussed in P. Pošiānas. “The main objectives of the institute: to prosecute investigations assigned by legal institutions and applications of other state institutions and private people; to investigate the criminalistic and forensic expertise problems; to carry out scientific research in the criminalistic and expertise; develop methods of expert investigation; examine the laws and bills, and make projects applying the scientific technical means; to qualify experts and scientists of criminalistics and investigation” [12]. Thus, the primary task of the Forensic Expertise Institute is the execution of the expertise that are followed by scientific, methodological and other work.

We suggest such division of the activities to be not expedient, nowadays.

In fact, after the reestablishment of Lithuania’s independence, the Forensic Expertise Institute (former the Forensic Expertise Scientific Research Institute) has been the main institution of the criminalistic expertise. Hence, it is purposive to save the scientific potential of the institute and to engage more scientists to make the scientific and methodological work prior to others. This objective needs certain conditions to be created as the

investment in science has no direct and rapid pay off. Along with this, the expertise should be carried out, but they should not be advantageous.

The jurisdiction of the Institute is an issue under the discussion, too, as it contradicts its interdepartment functions. The forensic expertise have become more complicated and complex technologies that require deep scientific knowledge and constant development of present expert methods have been applied. This approach requires the entire combination of expert practice and scientific research. Thus, it is unreasonable to alter the Forensic Expertise Scientific Institute to Lithuanian Forensic Expertise Institute at the first state and finally, to the Forensic Expertise Centre at the second stage. The objectives and arguments of the Institute specialist executives should be appreciated, and the government's tendency to turn the science into an optional subject should not be affirmed.

The way out of the situations may be a new Criminalistic Institute of Law University of Lithuania on the basis of real organisation, scientific and other background. The Forensic medicine Institute in Lithuanian University of Law has already been founded. There is a great scientific potency in the Department of Criminalistics of the University. In recent years (1995–2000) 5 doctoral theses have been defended in the department and additionally 7 theses have being written in criminalistics at the moment. The department carries out both the theoretical and applied criminalistic investigations.

The department proposed a new curriculum "Expert investigations" for the Master's degree students and this program has been realised since 2000. Thus, the department has become gradually the main scientific centre of criminalistics and, along with this, it provides the highest qualification for the applied specialists. Hence, under certain circumstances, a natural step (after passing the Law of Forensic expertise) should be a practical execution of the expertise.

Forensic expertise are considered scientific expertise, and thus, they should be protected and state supported, as the scientific crime investigation is within the country's interests.

The regulation of the IMA Criminal Investigation specify functions and the execution of expertise previously. The objectives of the IMA Criminalistic Expertise Services have always been the following: to apply technical criminalistic means and methods in holding the inquest and other operative actions, to execute the expertise and investigations and etc. During 1991–1999 the number of expertise and examination made by the Criminalistic Expertise Services increased more than 4 times, and by the Forensic Expertise Institute – 3 times; the number of examinations of the scenes of the crimes increased more than 2.5 times.

The criminalistic experts, along with the former functions, participate in holding the inquests, arrange certain card-indexes and etc.

In Lithuanian scientific literature the problem of forensic expertise competence has been discussed for several times. For instance, P. Pošiānas signified the IMA Criminalistic Expertise Service as an executor of the technical work, i.e. preparing the material for an expertise, but the investigation should be carried out by the expert of the Forensic Expertise Institute. In 1991 he wrote: "Taking into consideration, that the new Criminal Process Code defines that the primary actions in crime investigation should be prosecuted by the police inquirers in the participation of the specialists, the police system should include a section of criminalistic technique that could be in every branch office of the police. Audiotechnicians, fire safety engineering and other specialists, except experts of criminalistics, chemistry or physics, should form the section. Then, in collaboration with criminal police inspectors, they could examine the scene of the crime, fix, select and detect signs and material evidences of the crime, and in the case of necessity, carry out an urgent investigation and document it. Besides, the specialist of the section should conduct the investigation in the cases of an operative search, too. Consequently, Lithuanian Forensic Expertise Scientific Research Institute should execute expertise in the cases under the investigations that are assigned by a court, taking into the consideration the applications of public prosecutors, bars and other participants of the process" [10].

In 1996 P. Pošiānas maintained: "The Department of Criminalistic Expertise should be reformed and should belong to the police system, the Department of Criminalistic Technique should be formed and its branches should form criminalistic sections and subsections in the municipality police commissariats. The functions of the section should be following:

1. the examination of the crime scene preliminary investigation of the material evidences;
2. the preparation of the, material under the investigation;
3. the investigation of simple expertise (fingerprint, ballistic);
4. the investigations that ensure operative activities" [11].

In 1997 "The application of criminalistics and technology in crime investigation and court cases" assumed, that "the problem of crime investigation development and a qualified examination of the crime scene should be solved by reforming the IMA Department of Criminalistic Expertise into the Police Department Central Criminalistic Laboratory, and its branches should be the main local police commissariats technical sections and subsections (laboratories). The basic functions of the sections might be as follows: the examination of the crime scene and the preliminary investigation of material evidences; the preparation of the material under the investigation; some expertise (fingerprint, guns and etc.) and investigation that ensures

the operative activity” [13]. “The majority of complex criminalistic investigations might be carried out in Lithuanian Forensic Expertise Institute and its branches when they are supported by the material basis” [13].

Therefore, the concept of the expertise institutional structure should signify the functions of the IMA Criminal Departments in the examination of the scene of the crimes where various signs are detected. The experience of other countries in this particular domain can serve as an example [10].

Hence, it must be kept in mind the examination of the crime scene in some cases and many other basic investigations are executed by the experts of the IMA system, i. e. the system that is assigned to investigate by the court. This situation can be found in Germany, France, Great Britain, Poland and other countries [2, 6, 14, 15, 16].

We contradict the concept of monopolised expertise and concerned, that under circumstances it is necessary to reform them along with the co-ordination of scientific methodological and organisation functions. The concession to execute expertise for the specialist that are not researchers of the expertise institutions should be welcomed, as this sphere is demonopolised and decentralised in this way. Nevertheless, we suggest the concession like this to be strictly defined by the unaffected department expertise institutional certification regulations.

Our research has proved, that investigations of the crime scenes and the crime signs are impossible and the detection degree is rather low [9]. Thus, the crime investigation problems should be solved by expanding the structures of investigation and providing the scientists the possibility to carry on the scientific and methodological research in expertise and raise the expert qualification, rather than monopolising the investigation into a single structure.

An uncoordinated expansion of expert institutions by mixed State, department, regional levels and expert specialisation, by rapid tendency of spontaneous development of new expertise institutions (their branches) with waste of finance and with no satisfied need, let us to draw the conclusion, that any further development of the expertise institutions without a clear concept should be suspended and amended. What priorities should be drawn in the expertise reform? Probably there is no universally acclaimed truth, but we suggest the following issues to be discussed:

1. State expertise criminalistic technology institutions should detect the signs of crimes, expert some occasional and special signs, which could be investigated by other applied institutions that meet the requirement of applied competence (e.g. scientific institutes), and others experts.
2. A network of central and regional institutions should be created that would draw nearer criminal investigations to the scene of the crime on

the one hand, and would save the means and apply the specialist of high qualification on the second hand. The investigations should be classified according to their kinds, complication, regional need and ensure possible iteration of the investigation. Three levels of the criminalistic expertise institution structure are considered:

- in the centre – the Central Criminalistic Laboratory,
- in regional centres – an expert criminalistic section by regional police commissariats,
- in police commissariats – criminalistic technique subsections.

The main functions of the Central Laboratory should be as follows:

- to carry out complicated and iterated investigations,
- to foresee the IMA technical criminal policy,
- to organise and arrange central criminal registration,
- to develop a methodological and analytic work,
- to improve professional skills.

The main expertise institutions are considered to be expert criminalistic departments by the regional police commissariats. The basic expertise should be held there. Some expertise criminalistic sections could fulfil functions of regional laboratories and, taking into the consideration the need of legal institutions, could carry out a more various expertise than other sections.

The main functions of the police commissariats technical subsections are considered as follows:

- to examine the crime scene,
- to participate in inquiry process,
- to file local registrations,
- to carry out fingerprint, some kinds of trasological examinations and expertise of a non-fire-arms.

Experts for the investigation could be of the IMA criminalistic institution or selectively hired ones. The development of the IMA criminalistic institutions should be presented and realised step by step in co-ordination with the reform of other legal institutions.

3. Consider the role and functions of the Criminalistic Scientific Institute that generates scientific ideals and expert methodology, qualifies the specialists and carries out the most complex investigations. It should be kept in mind that institute unifies science, practice and studies. All the problems should be solved without any department approach that may arise in the progress of the reform. Law University of Lithuania is able to accomplish all these tasks.
4. State applied knowledge institutions serve the purpose of justice institutions and their functions along with their realisation should be defined. Equal possibilities should be provided for all the participants of

the case and an approach like “the expertise is assigned by application the decision of the before- the-trial judge according to the application of the public prosecutor by the principal of competition should be avoided” [4].

In the latter case the public prosecutor would have both to “compete” with protectors and present their interests. In fact, he/she would have the possibility to appreciate all the documentary in advance, and on this background knowledge could apply for an expertise.

5. The experience of other Middle European countries [5] shows that private expert structures could be applied along with the state ones, but the latter should be reformed on the legal basis. In the same way they would affect the investigation process of the cases. The selection of an expert structure should be based on the principal of competition that is the basis of democracy.
6. Taking into the consideration Lithuanian’s integration into European structures, it is necessary to receive international certification of the legal institutions and the co-ordination of their functions.
7. It should be taken into account the required, economy and most recent achievements in formation of a reasonable system with any duplication of their functions.

Which institution could accomplish these tasks? We suggest the scientific research to be carried out by independent researchers the way it has been practised in the process of the program “The criminology and criminal justice” [6].

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