

QUALITY AND COMPETENCE ACCORDING TO THE LAW OF FORENSIC SCIENCES IN ESTONIA

Kaja RODI, Robert ANTROPOV

Estonian Police Forensic Service Center, Tallinn, Estonia

ABSTRACT: By year 1996 Forensic Service Centre had become a central forensic institution that was able to serve the whole Estonia. Due to several reorganisations and structural changes that had taken place in the history of forensic science in Estonia, the legislation in the area of forensic science was splintered and contradictory. Several different laws regulated the area. Together with stability there grew a need to regulate and to unify forensic activity, to determine the legal status of forensic expert and to ensure availability of specialists by creating a database of officially certified experts. Due to huge development of science and technology it was extremely important to assure the efficiency and validity of legislation that regulated forensic examinations. Elaboration of Forensic Examination Act started in 1996 and the Act was passed on May 30, 2001. The Act entered into force on January 1, 2002.

The main objective in elaborating the Forensic Examination Act was:

1. to assure quality of forensic examination by unifying forensic activity determining legal status of forensic expert and creating a database of officially certified experts;
2. to cut down governmental costs by creating a system of charging the expenses of forensic examination from the convict.

Estonia is one of the few European countries having Forensic Examination Act. German, French and Austrian legislation was used in the process of elaboration.

KEYWORDS: Quality; Competence.

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I'm here today to talk about the Estonian Forensic Examination Act, which was passed by the Estonian Parliament on May 30th 2001. This means that the act is relatively new, as it entered into force only on January 1 this year. In addition some time was assigned for forensic service institutions to implement the act, and the final date of implementation was set on 1st of July this year.

I'm going to discuss three main topics:

- first, I'll try to explain the circumstances which lead to the adoption of this kind of legislative act;
- then I would like to talk about the main objectives of the act, explain its articles and implementation procedures;
- and finally I'll describe briefly our present situation and future hopes.

First of all, let's look at the map. Where is Estonia? It is the smallest country in the Baltic States, but not in Europe. The territory of Estonia is 45 thousand square kilometers, population less than 1.5 million and the capital is Tallinn.

Estonia became independent in February 1918; from 1940–1991 Estonia was part of the former Soviet Union. And, as the other Baltic States, Estonia regained its independence after the split of the Soviet Union.

In such a small country as Estonia it is quite difficult to build up an efficient system of conducting forensic examinations. The reasons for this are, among other things, lack of finances and human resources, frequent changes of government, and in some cases simply silly attempts to demand reforms without understanding the nature of area in question. In addition, although the level of crime in Estonia is relatively high, there is still too little demand for certain type of forensic examinations in order to develop them properly and organise the case work efficiently.

For example, examination and analysis of some kinds of physical evidence, such as gun shot residue, paint, glass and fibres, is not very commonplace in Estonia, and therefore it is hard to justify an expert specializing just in one such narrow area, and consequently formation of normal, well-functioning working groups. At the same time the costs of upgrading instruments and training personnel are very high.

Therefore, what we need is an efficient, but at the same time not too expensive system of forensic examination services, which would secure the rights of citizens for legal protection, and would be guaranteed by legislative acts.

1991, when Estonia regained its independence, marked the start of complete renewal of the legislative foundations of the country, including the solving of many acute problems in the realm of Ministry of Internal Affairs and Ministry of Justice. Problems relating to the development of forensic studies, however, were not considered a priority. One very important step was taken: Forensic Science Laboratory under the Ministry of Justice and Forensic Examination Unit under the Ministry of Internal Affairs, formerly a police unit, were joined into one Forensic Examination Bureau. But its legislative basis was not properly defined, no long-term commitments were made concerning the financing of the Bureau, and the status of forensic expert remained unclear.

In the beginning of 1990-ies the Ministry of Justice issued different kinds of licences or permits to private entrepreneurs for carrying out “all kinds of forensic examinations” and writing statements of their findings. The quality of work of these private examiners was, however, on most cases unsatisfactory – they didn't have the necessary professional qualifications to conduct this kind of studies. The courts couldn't use such examinations in their proceedings. The confusion led to situations, where in some homicide cases,

presented to the courts, no forensic examinations had been carried out at all. The courts could not put up with this state of affairs, as physical evidence plays an important role in court proceedings. They raised their objections in 1995, when the Chief Justice of the Supreme Court openly criticized the situation surrounding organization of forensic examinations in Estonia. He demanded that steps have to be taken to provide that forensic examinations are carried out in state-financed forensic services institutions, operation of which is regulated by special laws.

In his letter to the Government the Chief Justice requested the Minister of Justice to draft a Forensic Examination Act.

The task of drafting the act was given to the Ministry of Justice and the first working group, including also specialists in different fields of forensic examinations, was formed in 1996.

The draft was to a certain extent modelled on the basis of the Continental-Europe legal system and appropriate legislative acts of Germany, Austria and France were used.

Now some words about the contents of this act.

The act provides:

- the legal status of forensic institutions and their competence (list of forensic science examinations);
- definition of forensic expert – person employed by a state forensic institution, and necessary requirements for applying to become a forensic expert;
- the legal status of officially certified experts, the necessary requirements for a person to be entered in the list of officially certified experts, and maintenance of the list;
- the rights and obligations of forensic experts;
- the procedure of the calculation of and compensation for the expenses of forensic institutions;
- the procedure of calculation of officially certified experts and other persons who are appointed experts.

Acts pertaining to different proceedings had treated questions relating to forensic examination differently.

This act standardizes the rules and regulations of forensic examinations by enacting appropriate amendments in these rules and regulations.

Police investigators, prosecutors and judges have the right to appoint a forensic expert, officially certified expert or some other person to conduct forensic examination, if they are convinced in that person's competency to carry out an examination in the area in question.

State forensic institutions cannot cover all the areas of examinations, in which the courts or investigators need the opinion of a specialist.

What does it mean to be a forensic expert? It is a job, as well as a kind of official recognition.

Forensic expert means a person employed by a state forensic institution, whose duty is to conduct forensic examinations and he/she has to satisfy the following requirements:

- has active legal capacity;
- is proficient in Estonian;
- has higher education (academic degree);
- 2 years practical experience.

The law requires persons to meet these criteria in order for them to be employed as forensic experts.

When person starts to work in a forensic examination institution as a forensic expert, he/she has to give a “forensic expert’s oath”, write and sign it. Up to now we have had to confirm it with our signature on each examination report.

“I (name), swear to perform the duties of a forensic expert with honesty and to provide expert opinions impartially, according to my specific knowledge and conscience. I am aware that knowing provision of a false expert opinion is punishable pursuant to the provisions of § 175 of the Criminal Code”.

The most complicated issue in the process of implementation of this act was the question of salaries.

The Government finally issued a decree approving salary grades, which secured a small pay-raise for both medical examiners and forensic experts. In Estonia the salaries of judges and prosecutors have been raised on several occasions, and policemen’s employment conditions have also been improved, mainly with raising their pensions. Forensic experts are still the lowest paid employees, with the least social guarantees, in law enforcement system.

The Government justifies paying high salaries to judges by maintaining that high salary is the most important guarantee of their independence and impartiality.

We think that independence and impartiality of forensic experts is primarily guaranteed by his/her competence, good working conditions in well-equipped laboratory, and ethics. Competitive salary has to secure the possibility to choose the best specialists to work as forensic experts. Up to now our chances in this respect have not been too good, which has created serious problems in some areas, for example forensic IT and engineering.

According to a Government decree there are 2 state forensic institutions in Estonia:

- Estonian Police Forensic Service Center – KEKK;
- Estonian Bureau of Forensic Medicine.

Initially the plan was to create also a centre of forensic psychiatry, but building a new centre would have been extremely expensive, and the plan was abandoned.

Right before the act entered into force, the issue of joining together the Bureau of Forensic Medicine and the Police Forensic Service Center under the Ministry of Justice was raised once again. The goal was creation of a uniform forensic examination institution in Estonia. Neither of these institutions, however, was willing to accept at this stage such reorganization.

In year 2000 the Police Forensic Service Center got a EU Phare assistance project “Development of Police Criminalistics and Forensic Science”, which has continued for 2 years and is now coming to an end. The project meant purchase of new laboratory equipment for the Center and training of the staff for altogether 2.5 million Euros, thus considerably improving the working conditions of the experts and raising the standard of forensic examinations carried out in the Center. Radical organizational changes threatened the well-functioning cooperation of forensic experts and police investigators, because the main customer of the Forensic Service Center was the police. Finally, however, a decision was reached that KEKK remained a police institution under the Ministry of Internal Affairs, and Bureau of Forensic Medicine was transferred under the Ministry of Justice.

The competence of both forensic institutions is determined with appropriate Government decree – the competence of forensic institution shall be approved by the Government of the Republic or a competent minister appointed by the Government of the Republic.

The list of forensic examinations carried out in a state forensic institution is approved by the Ministry, under which the institution operates. In order to distinguish better the forensic examinations carried out in these 2 institutions, the examinations performed in KEKK are now called “criminalistic examinations”.

Here is the list of forensic examinations performed in KEKK: fingerprints, marks, firearms, handwriting, questioned documents, drugs, paint, fibres, flammables, DNA, alcohol, explosives, road accident investigations, arsons, explosive devices, forensic IT, voice analyses, forensic accounting.

Law also regulates the accounting of the expenses of forensic examinations.

The forensic institution issues together with the examination report a certificate of the costs of the examination. It is attached to the materials of the court proceedings. In some cases the costs will be charged from the offender as legal expenses. This way it is possible to compensate to some extent the expenses made by the state on funding the forensic examination institutions.

Analysis of expenses made also allows to estimate better future expenses and investments for the development of forensic institutions.

The cost of an examination conducted by a forensic expert shall be determined by the forensic institution taking into account the time and resources spent on the examination

Government decrees to forensic examination act:

- the price list of examinations conducted in state forensic institutions;
- the procedure for the calculation of and compensation for the expenses of forensic institutions.

The list of officially certified experts shall be maintained by the Ministry of Justice.

The procedure for maintaining the list shall be approved by the Government or a competent minister appointed by the Government of the Republic.

The list of officially certified experts includes at the moment 30 names. There are 13 forensic psychiatrists and 1 psychologist; 13 assessors of buildings and stock; 1 expert of motor vehicles; 1 expert of occupational diseases; and 1 expert of shipping and naval security.

In a small country like Estonia, there is not very much work available for private forensic examiners. The number of examinations ordered from them does not allow sufficient investments that are needed to assure quality and reliability of such examinations.

This brings me to my last point, which is the situation now and what we hope from the future.

The question of independence and impartiality of forensic experts is constantly an issue in Estonia, to a large extent, of course, thanks to media attention. The public seems to doubt that forensic experts could be impartial, if they work under the same Ministry with the police that conduct the investigations. These doubts, however, have not been corroborated by facts. Nevertheless it is often used as an argument by the side in a court case, who is not happy with the results of the forensic examination.

One way with which KEKK will try to deal with this problem and confirm the reliability and impartiality of its examinations, is the adoption of a quality system based on ISO/IEC 17025 standard. We hope that adopting the quality system will make it possible for us to apply for accreditation of our laboratories in a year or two.

For a small country international cooperation is of special importance. We have tried to participate as much as possible in the activities of the ENFSI.

Our Forensic Examination Act is, of course, far from perfect, although it took so long to draft. An official English translation of the Act you can find on Internet page www.legaltext.ee/text/en/X40072.htm.