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OBSERVATIONS ON EXPERT ASSURANCE IN COURT CASES RELATED TO COLLABORATIONIST ACTIVITY

Actuality of the theme

The issue of scientific assurance of the judicial process is widely studied by forensic scientists and legal experts. Since the mid-twentieth century, scientists and practitioners have constantly raised the issue of inefficiency of forensic support to law enforcement and court proceedings. The necessary organizational and legal transformations of forensic activities were seen not only in individual improvements of forensic examination procedures and technologies, but also in changes in the structure and functioning of forensic organizations, pooling of forensic activities resources and increasing the level of its coordination.

Obviously, the problem of effective organization of the forensic expert activity was to become one of the priorities of scientific analysis for the new independent field of scientific knowledge – the theory of forensic science, which was formed in the 1980s to study the forensic expert activity and develop recommendations to improve its effectiveness. At the same time, consideration of these issues requires changes in the established in the theory approaches to the analysis of its subject and object. These circumstances led to the formation of a new area of research in the theory of forensic science, which is related to the study of the role of the state in

the organization of the forensic expert activity, as the implementation of state policy in the field of the forensic expert activity [1, p. 3].

We consider the scientific support of the judicial process to be very important in the current situation, when the geopolitical area in which we live is invaded by inter-state conflicts. Crimes related to collaborationism are increasingly on the agenda of the judiciary, the investigation of which requires a specific approach in terms of providing sound scientific evidence. In the paper we aim to make some observations on the scientific support from the perspective of forensic linguistic expertise on the subject of collaborationism, which should benefit the judicial process during the investigation of such crimes.

Objectives of the work

In the paper we aim to make some observations on the scientific support from the perspective of forensic linguistic expertise on the subject of collaborationism, which should benefit the judicial process during the investigation of such crimes.

Research material and methods

A set of general and special scientific methods of knowledge was used to achieve the desired objectives. Initially, the dialectical method was used, according to which all the issues addressed in this article are presented in terms of their unity of content and legal form. To deepen the conceptual apparatus, the following methods were used: logical-semantic, sociological (by studying official, scientific and bibliographical sources) – in the process of collecting and accumulating scientific information about the object of study; comparative – to establish similarities and differences in approaching problems related to the object of study, previous practice as well as their interpretation; legal logic – when presenting reasoning and elaborating proposals, in the context of the object of research.

Results, discussions

The term collaborator dates to the 19th century and was used in France during the Napoleonic Wars. The meaning shifted during World War II to designate traitorous collaboration with the enemy. The related term collaborationism is used by historians restricted to a subset of wartime collaborators in Vichy France who actively promoted German victory [2, p. 1]. The negative connotation of the term is also used to designate Germans

and German institutions that cooperated with the Nazi regime, although in their case it is not a foreign occupying force. The use of the term was later extended to people who supported dictatorial regimes in their own country, even when no foreign occupying forces were involved. In Eastern Europe occupied by the Soviet Union after the end of World War II, there were institutions and individuals who collaborated with the Soviet occupation forces until the collapse of the communist regimes in 1989–1990 [3, p. 1].

It is safe to say that the notion of «collaborationism» has more of a political and emotional connotation associated with the tragedies of the Second World War than its significance for the science of criminal law. Therefore, its use to define the crime committed during the armed conflict on the territory of modern Ukraine entails all the «historical baggage» of the experience of its wide application in the post-war period to punish cooperation with the Nazi regime.

Without going into purely procedural details with reference to the term «collaborationism», which we leave to the proceduralists, we will attribute to this term the generally accepted meaning provided by the dictionary. As we know, the only means of scientifically acquired evidence in the judicial process is forensic expertise. In today's society, justice cannot be done without professional expertise, without the meticulous work of experienced and qualified experts. In dealing with cases of collaborationism, too, the judicial body calls on the assistance of judicial experts, including linguistic experts. Practice shows that a text can be a source of evidentiary information needed not only in criminal investigations, but also in civil law disputes in various categories of cases where the formal content of the text of a document, communication or statement is challenged. Linguistic analysis of the substantive, semantic and formal aspect of a speech work is the main way to identify the verbal constructions and linguistic units that fall within the scope of the specific offence provided for in the relevant legal provision. In the last few years, the term «linguistic expertise» has established itself as a common term and has expanded somewhat in scope.

As a common name for this type of expertise, various names have been used over the years – «forensic speech analysis», «lexical and stylistic examination of documents», «research on written speech», «speechwriting», and recently terms such as «linguocriminalistics»,

«legal linguistics», and «forensic speech science» have appeared in the methodological literature. For example, in the Republic of Moldova, the examinations given are attributed to the author's expertise. Regardless of the name, the tasks of this type of forensic expertise are similar, except that, depending on the socio-historical period, one or other prevails.

It is important for the judiciary to be aware of the possibilities of linguistic forensic expertise (author's or otherwise) in order to be able to make full use of scientific assistance in this regard.

Taking into account that in our country (Moldova), this kind of expertise is rarely used by judicial bodies, we consider it important in the current situation to make some clarifications on the object, tasks and possibilities of author's expertise, even if recently saw the light of the printing of the «Guidelines for the author of judicial expertise», which guides the judicial bodies in this sense [4, p. 57, 58]. It should be noted that the guide does not contain ready-made solutions for every case, i. e. we consider our comments on the scientific support in linguistics dedicated to the phenomenon of collaborationism quite welcome.

The object of forensic linguistic expertise is oral and written texts, as well as objects that combine verbal and non-verbal information (a combination of text and image) [5, p. 37].

Traditionally, written texts include publications in periodicals, printed material of mass distribution of propaganda or informational content, books and pamphlets, inscriptions or other texts recorded on paper photographic or video recordings. By now, text messages (including mass mailings), messages on forums and social networks, files sent by e-mail and peer-to-peer networks and publications on websites should be added to this list.

Oral texts, which include public speeches, interviews, negotiations and other communications, are subject to the requirement to be recorded in audio or video format. Linguistic examination of texts reconstructed from memory, outlined or recorded in any other indirect way is not allowed, as in such cases the object of research is substituted. Such materials may be examined by an expert linguist as additional information to clarify the main object under investigation.

Linguistic expert examinations of copies of documents are allowed, but the copies submitted for examination must be certified to exclude possible forgery.

Texts and other materials posted on the Internet are a specific object of linguistic expertise, reflecting the current trends of technological progress. Procedural seizure and fixation of such objects should be performed by an investigator, involving a specialist with relevant qualifications (in the field of computer security, network technology, etc.). Such materials are provided for linguistic expertise in electronic form. This form of materials under examination allows the expert to examine not only the text itself, but also its situational characteristics, which can be expressed in hyperlinks, attached files and illustrations, comments, etc., which would be impossible or difficult when examining paper copies of electronic documents.

It is very important for the judicial body to understand that very often the questions they submit to the expert can be solved exclusively, provided that integrated knowledge is applied in a complex expertise, such as:

– with phonoscopic examination (e. g. when the object of examination is oral speech recorded on a dictaphone);

– handwriting examination (e. g. if the author and the author of a handwritten text are not the same person);

– forensic examination of documents (for instance, if there are suspicions of artificial compilation of a text);

– computer forensics (e. g. if the content of an Internet website, domain names, computer slang, e-mail content, text messages, etc. is to be examined);

– forensic psychological examination (e. g. when testing the theory that at the time of writing the author was not fully aware of his actions and could not control them);

– forensic psychiatric examination (for example, if it is necessary to establish the sanctity or state of mind of the author of a suicide note);

– forensic examination of goods (e. g., in a complex examination of counterfeit goods), etc.

The implementation of such research is connected with the implementation of a set of organizational, legal and methodological measures of regulation of forensic activities on the basis of application of special knowledge for the purpose of effective expert support of law enforcement activities and legal proceedings.

At the same time it is necessary to carry out special measures in such main directions as organizational and legal, scientific and methodological

and personnel support. However, a problem that is not always solved by methodological and scientific support is that of the limits of the competence of the forensic linguistic expert. The distinction between legal and special competences – linguistic and forensic – is a problem that persists less among legal experts and more among authorising officers (judicial body). In practice, there are situations when the judicial expert, the executor of an author's expert opinion (Republic of Moldova), has been claimed to have exceeded his competence by giving the judge's opinion on the preparation of procedural documents (in dispute). Although the prosecutor of the case very well understood what was set out in the expert report on the case and correctly interpreted the conclusion, the defence was unable to assess professionally the conclusions of the expert and the arguments on which he based them [6].

Of course, forensic authoring, being a science on the borderline between linguistic and legal knowledge, it is difficult to correctly determine the boundaries of competence. Scientific solutions to this problem have been put forward by several researchers. The most relevant, in our opinion, are the reasonings presented by Golev N.D. in his works [5, p. 31–33].

The given problem is solved by the types of relations between language and law:

1) language as an object of legal regulation,

2) language – as an object of research (e. g. the text in dispute).

At the same time, other researchers consider that language – as an object of research – is nothing more than a «linguistic trace» in which data of legal importance are reflected [7, 8].

We believe that there are no essential differences in these views, only that the authors use distinct categories. We advocate operating with forensic ones, i. e. the disputed texts should be taken as «linguistic traces», for easier operation and a unique approach in forensic and expertological frameworks.

If we start from the need for forensic expertise, including author/linguistic expertise, it arises when the judicial body cannot clarify certain facts without the use of special knowledge. Irrespective of the state, the grounds for ordering expertise are similar, as expertise itself is a procedural action, designed to establish certain facts – on the one hand,

and an investigative process, which ensures the establishment or non-establishment of facts, on the other.

In the first case – forensic expertise is a purely procedural activity, governed by strict rules laid down in procedural laws. In the second – nothing legal, being applied scientific theories, which describe fragments of reality, the investigation of which is part of the object of a certain science. In other words, in the process of expertise, specially developed scientific theories and methodologies are applied, directed towards solving concrete research tasks.

Respectively, general reasoning is used to delimit the special competence of the judicial expert in language expertise.

The linguistic forensic expert/author cannot solve problems concerning the qualification of the person's actions, only those concerning the assessment of the content of the investigated object (see above the objects of study of linguistic expertise). With regard to the application of linguistic expertise in solving cases of collaborationism, the same reasoning about competence and its limits must be applied.

The limits of the linguistic expert's competence are not only related to the boundaries between linguistic and legal science. Often problems of competence also arise at the boundaries between other sciences and linguistics (psychology, graphoscopy, etc.).

It is a procedural error for an expert to go beyond the limits of his/her competence. It is an error in dealing with issues that are the prerogative of the law enforcement officer, requiring special knowledge of other sciences or fields of knowledge.

Thus, based on those analyzed in this paper, with reference to the methodological support oriented towards solving problems of collaborationism, necessary to be made available to linguistic experts, we formulate the following -

Conclusions

In the appointment of a forensic linguistic examination, in collaboration cases, it is necessary to proceed from the general provisions of forensic and procedural law and to consider the subjects of the examination.

In carrying out forensic linguistic examinations in cases of collaborationism, just as in other situations, the expert identifies information and

makes an assessment using purely linguistic research methods, rather than being guided by common sense and moral and legal attitude.

The elaborated expertise methods, oriented towards solving the tasks of collaborationism, it is necessary to supplement with enlarged data about the objects of the examination, the algorithm of investigations with the application of integrated knowledge, but also with aspects of delimitation of expert competences.

BIBLIOGRAPHY:

1. Sved A.I. Theoretical prerequisites and price aspect of the implementation in the Republic of Belarus of a unified state policy in the sphere of forensic and expert activity : reports thesis for the degree of Doctor of Law on special information : 12.00.16 / Belarusian State University. Minsk, 2021.
2. https://en.wikipedia.org/wiki/Wartime_collaboration (accessed 15.06.2022).
3. https://ro.wikipedia.org/wiki/Colabora%C8%9Bionism (accessed 15.06.2022).
4. Guidelines for the author of judicial expertise / Institute of Penal Reforms, Moldova, UNDP, Chisinau, 2022. Brinev K.I., Forensic Linguistics Guide, Barnaul, 2014.
5. Archive of the National Centre for Judicial Expertise of the Ministry of Justice of the Republic of Moldova. *Judicial Expertise Report*. No. 16, 17 of 13.01.2017.
6. Belkin R.S. Forensics course, T. 2 m. 1997. P. 289–345.
7. Zinin A.M. and others. Introduction to judicial expertise. M., 2002.