

Abstract of the doctoral dissertation entitled. D. thesis entitled "The language of psychological and psychiatric opinions issued in homicide cases",

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Problems of the dissertation "Language of psychological and psychiatric opinions in homicide cases". The dissertation, entitled "Language of psychological and psychiatric opinions issued in homicide cases", focuses on several aspects/levels as well as fields of science. It is interdisciplinary as it draws on linguistics, psychology, psychiatry and, of course, law. From the point of view of providing an opinion, an expert opinion has no value without proper understanding and interpretation. Not only the language of the expert report itself, the conceptual and technical apparatus, but also its structure is an important element for the decision-maker in proceedings.

For the purposes of the dissertation, the following research hypotheses were formulated:

- 1) legal, juridical and specialist language intermingle,
- 2) psychological and psychiatric opinions are not different in terms of persuasiveness,
- 3) psychological and psychiatric opinions, are not different in terms of hermeticity,
- (4) the trial decision-makers judge the language and expressing opinions on experts to be clear and the opinions to be complete and, in most cases, not requiring supplementation,
- 5) the opinions of the expert psychiatrists and psychologists have a significant impact on the conviction.

The dissertation consists of two main parts - the theoretical part and the research part, within them there are seven chapters. The first two chapters deal with linguistic issues, including a discussion of the linguistic status of legal and juridical language, analysed in the context of language in general. An attempt is made to systematise linguistic concepts at a high level of generality. The theses of structural linguistics have been characterised, not forgetting the fundamental theories and principles by Ferdinand de Saussure. The forerunners of the Kazan school and glossematics are referred to, while the issue of the evolution of this branch of science on the American ground, i.e. forensic linguistics, is discussed. What is particularly important, it was shown that on the ground of law we encounter statements of various, completely unconnected character. Thus, the construction of a legal provision, citing, for

example, Article 148 § 1 of the Penal Code: "1. Whoever kills a human being shall be liable to imprisonment for a term of not less than 8 years, to 25 years' imprisonment or to life imprisonment" differs from the language of the doctrine - interpreting, commenting on this provision, namely: "behaviour which realises the elements of the type defined in Article 148 § 1 may consist in various interference with the well-being of a person, including physical impact on his or her body or interference in the sphere of the psyche. (M. Królikowski, in: Królikowski, Zawłocki (ed.), Kodeks karny. Particular, t. 1, 2013, p. 197, [in:] A. Grześkowiak, K. Wiak (ed.), Kodeks karny. Commentary. Wyd. 7, Warsaw 2021, Legalis). The legal character can not be denied also to the speeches of professional attorneys in court, if only by analysing their defensive speeches. This variety was already written about by Bronisław Wróblewski in 1948, who distinguished between legal and legalistic language. The third chapter presents aspects related to the scientific evidence in the Polish criminal procedure, as it is difficult to analyse opinions without the theoretical background - the Code of Criminal Procedure, as well as the Regulation of the Minister of Justice of 24 January 2005 on expert witnesses, so far the only basis and framework provided by law. It discusses in detail the principles related to the mode of appointment of experts, the requirements imposed on them, not limiting itself to formal issues only. The structure of the opinion is presented in the light of the provisions of law and case law, and the legitimacy of using a comprehensive or private opinion is discussed. The fourth chapter covers selected issues of psychiatric and psychological opinions, as detailed studies have been devoted to these opinions. In the historical context, reference is made to the humoral theory prevailing in antiquity and the Middle Ages, which was a specific attempt to explain the causes of mental illnesses, including balance disorders. The eighteenth-century concepts, in turn, include achievements in pathological anatomy and the first clinical descriptions; a separate subsection is devoted to forensic psychology and the terms psyche and logos. The first psychological laboratory for experimental research, founded by Wilhelm Wundt, is not forgotten. The diversity of terminology is shown, as well as the distinction of narrower branches of forensic psychology, including investigative psychology and penitentiary psychology. An extremely important element of the dissertation was a discussion of the basis of psychological and psychiatric expertise and the importance of the role of the psychologist/psychiatrist in criminal proceedings. It is a well-known fact that the justice system relies on psychological knowledge, and clinical psychology provides solid support for it. Thus, the literature on the subject indicates that the role of the psychologist and the expertise commissioned by him/her is most often limited to establishing and describing: the mode, the life line of the patient, the

motivation for the action, the history of treatment (past trauma, mental health clinic, possible disorders, inter alia in the sphere of sexual desire), the intelligence quotient, and above all the type of crime committed. These elements make up the so-called psychological profile of the perpetrator. The trial also raised the issue of the difficult nature of the work of an expert psychologist, who on the one hand, by virtue of his or her function, as a rule provides assistance to the examined persons, but on the other hand, on behalf of the trial body, plays a servile role, as his or her task is to provide only objective information about the examined person along with conclusions. The purpose of the examination is to process the collected data and then interpret it in the context of a particular psychological theory. Interesting theories have been presented, among others, by Agnieszka Fiutak, Teresa Gardocka and Dariusz Jagiełło (*Psychologist and his role in criminal proceedings*, ed. C.H. Beck, Warsaw 2018, 1st edition, *Legalis*) in the context of rules and principles of conduct that should guide every expert (psychologist), including: "subjective treatment of the examined person, elaboration of the opinion in a linguistically correct manner - legibly, correctly and logically, selection of appropriate research tools, taking into account the available and proven scientific knowledge, situational context and individual characteristics of the examined person, as well as correctly outlining the conclusion of the opinion and indicating the cause-effect relationship that led to it". Due to the topic pursued, the trial did not lack numerous references to the theory of forensic psychiatry, a branch dealing with exploration and determination of psychiatric problems for the purposes of law application. The Supreme Court commented on what should undeniably be included in such an expert report, and thus: "a description of the methods and manner in which the examinations were carried out, a statement of the order in which they were carried out, as well as all the arguments based on the circumstances which are relevant to the facts under examination and which are supported by the explanations of the experts. In addition, experts should take a position in the opinion on each fact (evidence) and on the basis of their special knowledge demonstrate which of them is helpful in determining the mental health of the accused and which is not and why, as well as respond to each document relating to the treatment of the accused and take into account the findings of the expert psychologist" [Supreme Court judgment of 17.10.1983, II KR 214/83, OSNPG 1984, No. 4, item 32].

The second part of the dissertation - the empirical one - begins with chapter five, in which the course of the conducted research is characterised. For the purposes of the thesis 62 court cases were analysed, which took place in the years 2010-2016 in three districts: Bielsko, Toruń and Koszalin. The analysis of opinions in the context of linguistic research was carried out on the

grounds of homicide - a crime which indisputably harms the highest good protected by law, which is human life. This category is placed in the 19th chapter of the Penal Code. This crime arouses extreme emotions, increases curiosity and raises the question: why did he/she do it? Also the very identification of the perpetrator of the act increases interest among the public. For the purposes of the trial, the first pilot study was conducted in the District Court in Toruń. Extensive research material was collected in cases of murder or attempted murder. It was assumed that it is in the files of these cases that the It was assumed that it was in the files of these cases that most opinions were to be found. A wide range of material was archived in the form of photocopies. Such an action made it possible to orientate oneself as to their contents, content and, above all, to acquire knowledge as to which expert opinions are used in this category of crimes. In these files there were 19 different types of expert opinions, both forensic and non-forensic. Among others, law enforcement and justice authorities used the following opinions: forensic medical, psychiatric, psychological, ballistic, mechanoscopic, traseological, dactyloscopic, genetic, osmological, biological, toxicological, scribal, etc.). The probing studies showed that forensic medical examinations, i.e. autopsies, were the predominant ones, which seems obvious from the point of view of the need to establish the cause of death. However, it was the psychological and psychiatric expertise that the author of this thesis decided to focus on, as it was these that had a significant, if not decisive, impact on the final decision of the trial decision-maker.

The next stage of research consisted in analysing case files from the Regional Court in Koszalin and the Regional Court in Bielsko-Biała. The focus was then exclusively on opinions of expert psychologists and psychiatrists. Such a choice was determined by the fact that the appeals were diverse - Northern, Central and Southern Poland. It turned out to be interesting and extremely important to verify specificity as well as interdependencies between these three districts in the context of opinions. Selected cases (14 - Bielsko-Biała SAC, 15 - Toruń SAC, 33 - Koszalin SAC) involved a conclusion, i.e. a final judgment or a decision on discontinuance of proceedings. In total, in all examined homicide cases, 94 experts provided opinions, including 33 psychologists and 61 psychiatrists. Subsequently, in the course of the conducted activities, issues relevant to this work were checked. Statistical analysis was performed, taking into account the following categories: number of convictions, number of discontinuances, penalty level, age of the perpetrator, manner of committing the crime and duration of proceedings.

The sixth chapter is the result of detailed studies on opinions. Psychological opinions have been characterized in the context of the subject of expertise (decisions on the appointment of an expert of this specialty have also been visually verified) as well as the degree of categorical character of these opinions. The research has shown which research methods are most commonly used in psychological diagnosis, and diagnostic methods have been specified. A crucial issue emerged in the subsection entitled: "the language of expert psychologists in the context of its hermeticity and persuasiveness". Terms derived from specialist language were taken on board. From the perspective of the recipient of the communication - a lawyer, this language is incomprehensible, unclear and, above all, vague. Analogous actions were performed on the basis of reading and selection of the terminology of psychiatric opinions. After all, psychiatric opinions are devoted to Article 202 of the Criminal Code, which provides the framework and procedure for admitting expert evidence on the mental health of the accused. The examination of the file allowed for a negative assessment of psychiatric opinions and a statement of their vague, ambiguous and unclear character. Unfortunately, a number of allegations against the experts were formulated.

Chapter seven of the dissertation analysed the justifications to judgements in the context of the courts' assessment of psychological and psychiatric opinions and their impact on conviction and non-conviction. The research showed that, in general, the opinions (both psychological and psychiatric) were always clear to the judge, clear, not questionable and, above all, issued by qualified specialists. Only in one case was the expert's thesis challenged by confronting his position with another specialist, thus showing an illusory scrutiny of scientific evidence.

The case study - the last chapter - is an analysis of three cases, pending in three, different counties in the context of justifications to judgments. The language of the experts, the power of persuasion and airtightness is shown, and the reaction of the judiciary through the analysis of the justifications is detailed.

The analysis of the research material only confirmed the research hypotheses set by the author of the paper. Opinions of psychologists as well as psychiatrists are characterised by bias, vagueness in statements, vagueness, lack of precision, incomprehensible for a lawyer way of expressing the content, and to that a suggestive message. In addition, a number of irregularities have been found in relation to opinions. Years ago, Albert Einstein stated that "if you can't explain something in a simple way, you yourself don't understand it well enough", these words could be successfully dedicated to the specialists of many scientific fields, with a

remark that this should not be the case. The results of the research are not optimistic, which also reflects negatively on the Polish legal system concerning experts, which has been functioning without a relevant act for years. About how po This also reflects negatively on the Polish legal system concerning experts, which has been functioning without a relevant act for years. Dr Józef Gurgul, one of the most eminent Polish prosecutors, wrote many times about how the cooperation of procedural organs with experts should be arranged. He claimed that the basis of their cooperation, "bonds are created by: a sense of community in serving the truth, treating each other as partners, inspiring respect for the professionalism of both sides of the relation procedural organ - expert" (J. Gurgul, Kilka kwestii procesowo-kryminalistycznych dotyczące biegłego i opiniowania, Problemy Kryminalistyki 2000, no 229, p. 51), and a possible dispute between them can become "the father of truth" (J. Gurgul, Wybrane problemy w kontaktach organu procesowego z biegłym, Problemy Kryminalistyki 2004, nr 244, p. 20) and that "a common language is reached by a bumpy road". (Ibidem, p. 22). In my opinion, these should not be wishful thinking, but everyday practice between the trial authority and the expert.

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