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THE IMPORTANCE OF MEDICAL EXPERTISE IN CRIMINAL PROCEEDINGS IN CASES OF MURDER

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Considering the value of the protective object, the crime of murder is one of the most socially dangerous crimes. The aim of the paper is to point out the importance and tasks of forensic medical expertise in court proceedings for criminal offenses of murder. The intention was also to make suggestions for improving those parts of the process of forensic medical examination and the determination of homicide in general, which in everyday practical forensic work were found not to function as they should. In suspected murder cases the investigative procedure is based on two processes, criminal investigation and expert examination. Forensic autopsy of a murder victim encompasses detailed examination of the corpse, clothing and footwear, a precise description of all injuries on the body, as well as damage to clothing, and their photo documentation. It is necessary to determine the cause-and-effect relationship between the ascertained injuries and the resulting death. The forensic medical expert is also expected to indicate more closely the manner of the violent death, i.e. whether it is a murder, suicide or an accident. In addition to the autopsy, forensic expertise in cases of murder is, as a rule, carried out in the form of an expert report from the court records, based on the analysis of all the collected data mentioned in the subject

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files that the court provides to the expert, asking him in the order for the expert opinion specific questions to which he should answer.

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INTRODUCTION

Considering the value of the protective object, the crime of murder is one of the most socially dangerous crimes (Petrović, Simić, 1988; Jovašević, 2017). The forensic definition of murder was given by Prof. Milovan Milovanović as „a conscious and intentional destruction of someone else's human life“ (Milovanović, 1979). Pejaković (1991) claims that there is no murder in the forensic sense, because murder is essentially a criminal offense which is listed as such in the Criminal Code. He defines murder as the illegal and violent destruction of another person's life (e.g. execution of the death penalty, if it is provided for by law, represents the conscious and intentional destruction of another's life, but it cannot be the criminal offense of murder because it does not contain an element of illegality). Murder is determined by the court as a criminal offense, and forensic medical expertise is only one of the means of evidence in court proceedings, but it should be emphasized that the facts established by forensic medical expertise are in numerous cases of crucial importance for making a fair court decision.

The aim of the paper is to point out the importance and tasks of forensic medical expertise in court proceedings for criminal offenses of murder. The intention was also to make suggestions for improving those parts of the process of forensic medical examination and the determination of homicide in general, which in everyday practical forensic work were found not to function as they should.

Investigative procedure in cases of suspected murder

After discovering the fatal case, it should be determined whether the death was natural (caused by disease) or violent (caused by injury), and if it is violent, whether the injuries that caused the death were inflicted intentionally by another person or not, that is, whether they have the characteristics of homicidal injuries, as opposed to suicidal and accidental injuries.

The investigative procedure is based on two processes, criminal investigation and expert examination (Milovanović, 1979). Depending on the nature of the act of murder, different types of expertise are possible, but forensic expertise is certainly one of the most important. The role of the forensic medical expert is important both for diagnosing the murderous manner of death during the investigative procedure, and for determining all the characteristics of the murderous act, which are significant for its legal qualification during the criminal procedure.

The investigation process begins in the moment when a corpse is discovered and when it is suspected that it was a murder. Failures that are initially made during the investigation at the scene can hardly be corrected later. The presence of a forensic medical expert at the scene is extremely important. By examining the site and the corpse at that site, the forensic expert determines facts that may be of key importance for further directing investigative actions and definitively solving the case (determining the appearance of the site, the position of the corpse and possible signs of its movement after death, measuring the external temperature and other important atmospheric characteristics, determining the signs of death and approximating the time of death, finding biological and other traces, etc.). The most ideal situation is when the forensic doctor who will later perform the autopsy is previously present at the scene of the incident, because in this way he will be able to compare the information established and obtained on the spot with the autopsy report. However, this is difficult to ensure in practice due to the relatively small number of forensic medicine specialists. Unfortunately, it often happens that the complete investigation at the place where the murder victim was discovered is often carried out without the presence of a specialist in forensic medicine. Such a negative practice should definitely be changed in the future.

Based on the data determined on the spot, the forensic medical expert can give an indicative opinion on the manner of death. However,

this does not mean that it is definitely the correct diagnosis, because it happens that the performed forensic autopsy shows that those initial assumptions were incorrect. In the further course of the investigative procedure in cases of murder, the forensic medical examination takes place in two directions, one refers to the forensic autopsy of the murder victim, and the other to the examination of the perpetrator of the crime. In accordance with Article 129 of the Code of Criminal Procedure of the RS (hereinafter referred to as the CPC) (*CPC*, 2019), the public prosecutor or the court determines the performance of an autopsy, which should be performed in a timely and adequate manner by a specialist in forensic medicine.

Forensic autopsy of a murder victim

The autopsy should answer the questions stated in paragraph 5 of Article 130 of the CPC (*CPC*, 2019): „If any injury is found on the corpse, it will be determined whether the injury was inflicted by someone else, what caused it, in what way, how long before death occurred and whether it caused the death, and if multiple injuries were found on the corpse, it will be determined whether each injury was inflicted by the same means and which caused the death, whether there were multiple fatal injuries, what is the sequence of their occurrence and whether only some of them caused death or death was the result of their collective action".

Before starting the autopsy, the forensic medical expert should be familiar with all the data that has been collected by the previous investigative actions. These data can be significant for directing the technical implementation of the autopsy (eg, performing certain types of special autopsies). It is especially important that the forensic pathologist be informed about the characteristics of the injurious instrument, i.e. the weapon, if it has been discovered.

Forensic autopsy is a very complex process that should include the following procedures:

Detailed examination of the corpse, clothing and footwear, a precise description of all injuries on the body, as well as damage to clothing, and their photo documentation (paragraph 3 of Article 130 of the CPC) (*CPC*, 2019). The autopsy must be complete, with an external and internal examination performed according to all the principles of forensic science and practice and with the application of all necessary special autopsies and dissections (dissection of soft facial tissue, special autopsy of the

neck, dissection of the skin and subcutaneous tissue of the entire body, in order to determine injuries to deeper tissues that do not have to be visible from the outside on the skin).

The description of traces of blood on the body, clothes and shoes can indicate the position of the victim's body during the injuring, walking of the victim after injuring (traces of blood on the soles or soles of the feet), the position of the corpse after the occurrence of death, as well as the transfer of the body from the place of injuring.

Paragraph 2 of Article 130 of the CPC (*CPC*, 2019) stipulates the duty of the examiner to detect, describe and take biological traces (blood, hair, semen, saliva, etc.) from the corpse. Biological traces can be found on the victim's body, clothes and shoes, and they can originate from the victim, the attacker, but also from other people who were present at the scene. DNA analysis and forensic-genetic expertise compares the DNA profile of these biological traces with the traces found at the scene, the weapon and the attacker, which makes it possible to identify the perpetrator of the murder and the means by which the murder was committed. During the autopsy, it is mandatory to take a reference biological sample from the victim in order to determine his/her DNA profile.

Taking of blood, urine and vitreous humor samples for chemical-toxicological analysis in order to determine the drunken state, as one of the significant homicidal factors, as well as the presence of other psychoactive substances or other toxic agents. In cases of homicide by poisoning, chemical-toxicological analysis is of crucial importance for the detection of homicide and the murderous chemical substance.

Autopsy determines traumatological, normal anatomical and pathological anatomical findings (Milovanović, 1979). Traumatological examination involves diagnosing all injuries on the body and describing in detail all their characteristics. Based on the established characteristics of the injuries, it is possible to identify the type of injurious tool or weapon, and in some cases the specific tool or weapon with which the murder was committed: identification of a knife based on the characteristics of stab wounds on the victim's body (Saukko, Knight, 2016); identification of a firearm based on the ballistic analysis of the projectile found in the victim's body (Di Maio, 1999). The appearance of certain injuries can also help in the identification of the murderer (for example, a comparative analysis of the bite marks on the victim's body and the tooth print of the suspected assailant).

A normal anatomical finding refers to the sex of the victim and physiological conditions that could be significant for the act of murder

(e.g. age, pregnancy, menstruation) (Baralić, 1995). Pathological-anatomical findings include all pathological changes on the corpse, some of which can be significant homicidal factors (e.g. signs of long-term alcohol abuse), and others can indicate the victim's inability to defend himself against the attacker.

For each ascertained injury it should be determined whether it was inflicted during life or after death, based on the presence of absolute and relative vital reactions. This is especially important in those cases when the killer tries to present the death of the victim as an accident or suicide (e.g. posthumous hanging of the corpse, placing it on the tracks and dismembering the body by a train), or tries to remove the corpse, e.g. by burning it. In such situations, a forensic autopsy can determine the true cause of death, i.e. detect fatal injuries. However, in the second group of cases mentioned, it sometimes happens that the postmortal carbonification completely destroys the body and all injuries, which makes it impossible for the expert to determine not only the cause of death but also identity of the victim.

During the autopsy of the fetus and the newborn forensic pathologists should answer some additional questions according to the paragraph 7 of Article 130 of the CPC (*CPC*, 2019): its, capacity for extrauterine life, cause of death and whether it was born alive or dead. The answers to these questions are obtained by a special forensic autopsy, which is important for determining the criminal offense of child murder during childbirth from Article 116 of the Criminal Code of the Republic of Serbia (hereinafter CC) (*CC*, 2024).

Based on the findings established by the forensic autopsy, a conclusion is given on the manner and cause of death. In cases of murder and other violent deaths, it is necessary to determine the cause-and-effect relationship between the ascertained injuries and the resulting death. This is relatively easy when death occurs within a short period of time after injuring and when there are macroscopically visible and convincing signs of injury. However, problems may occur in the following cases: If the victim's death occurs after a certain period of survival, at the time of the forensic autopsy, the original characteristics of the injuries may be significantly changed due to the healing process and medical interventions, and in the case of murderous poisoning, death may occur after complete metabolism and excretion of the poison from the body. In such cases, well-maintained medical documentation is crucial, both for determining the initial appearance of the injuries and for finding a cause-

and-effect relationship between the injuries sustained and the fatal outcome.

The autopsy report can sometimes be scanty or even negative, and yet it is a case of murder (e.g. some cases of fatal pressure on the neck or plugging the nose and mouth of infirm person with soft object, when the general signs of asphyxia may be slightly expressed or completely absent) (Saukko, Knight, 2016). In such cases, it happens that inexperienced coroners state some non-existent cause of death, and later investigations prove that it was a case of murder. Such situations have been described, for example, in cases of newborn or infant deaths initially explained as natural deaths, while the mothers subsequently confessed the murder committed by manual smothering (Meadow, 1999). A similar thing can happen to poisoned persons who died after a certain period of survival, i.e. after elimination of the poison from the body, where appropriate clinical toxicological analyzes were not performed during the period of outliving. Due to such cases, the courts must be aware of the fact that the forensic autopsy is not omnipotent and that there are situations even with corpses that are not in a state of advanced putrefactive changes, when after a complete macroscopic, microscopic, toxicological examination and other necessary analyses, the cause of death cannot be determined at all or with certainty. In such situations, an expert can help the court to indicate a possible cause of death on the basis of data obtained from other investigative actions (crime scene investigation, witness statements).

The pre-existing diseases and changes, as personal characteristics or special conditions of the victim's body, can significantly affect the deterioration of the outcome of the injury. The forensic medical expert is obliged to clarify such cases to the court, which is defined in paragraph 6 of Article 130 of the CPC (*CPC*, 2019): „whether the death was caused by the very type and general nature of the injury or due to the personal characteristics or special condition of the injured organism or due to accidental circumstances or the circumstances under which the injury was inflicted“.

Determining murder and distinguishing it from suicide and accidents

In addition to determining the violent manner and immediate cause of death, as well as the cause-and-effect relationship between the ascertained injuries and the fatal outcome, the forensic medical expert

is expected to indicate more closely the manner of the violent death, i.e. whether it is a murder, suicide or an accident, based on the autopsy report. In this regard, it should be emphasized that the forensic autopsy by itself is not in all cases an absolutely reliable way of determining the manner of a violent death. Although often the most significant, it always represents only one of the evidence that, in correlation with other data obtained during the investigation process, enables in most cases a differential diagnosis between murder, suicide and accidents (Milovanović, 1979; Savić, Baralić, 1995; Ječmenica, Pavlekić, 2019; Savić, 2002). This should not be considered an easy task in any case, because it is a complex process in which the forensic expert is not omnipotent. That is why the autopsy report does not, as a rule, define whether the manner of violent death is homicidal, suicidal or right-handed, because the definitive decision on the manner of violent death, i.e. whether it is murder, suicide or accident, as well as the existence of a criminal offense and the determination of its character in accordance with the Criminal Code, is not decided by the forensic expert, but by the public prosecutor based on all the evidence collected during the investigative procedure, including the forensic autopsy.

Murder can be committed by all kinds of injuries (mechanical, physical, asphyxial, chemical, nutritional). In the case of the most common types of murderous injuries (gunshots, stabbings and cuts, blunt trauma), globally speaking and without going into detail about individual types of these injuries, the following characteristics are typical of the murder: a large number of injuries, which are localized on different parts of the body, and outside the regions typical for suicidal injuries, such as the right temporal and pre-cardiac region, in areas that are beyond the reach of the victim's hand, and damage to clothing (shooting or stabbing a knife through clothing), while in the case of suicide clothing is usually removed from the place of inflicting injury (Milovanović, 1979; Brunel et al., 2010; Dettling, Althaus, Haffner, 2003; Ambade, Godbole, 2006).

The so-called defensive injuries are of particular importance in proving murder, since they occur when the victim tries to defend himself/herself from the attacker (Mohanty et al., 2007). Their presence on the corpse indicates the murderous manner of death, as well as that the victim was conscious in the course of committing the act of murder at least for some time (Milovanović, 1979; Saukko, Knight, 2016; Mohanty et al., 2007). There are two types of defensive injuries (Savić, 2002). The first are passive defensive wounds resulting in an attempt to

protect the victim's head and body by protruding hands as a shield, resulting in soft tissue injuries in the dorsal area of the forearm and the back of hands. In the case of the high intensity force (hitting the arm with a metal or wooden rod), besides soft tissue injuries bone fractures can occur, most commonly of ulna. Active defensive injuries occur in an attempt of the victim to catch the weapon, mostly sharp or pointed one, resulting in characteristic injury on the palm of the hand. The most typical localization of the wound for murders committed with a knife is in the space between the root of the thumb and index finger, because the victim attempts to catch the blade (Saukko, Knight, 2016; Katkici, Ozkök, Orsal, 1994). On the other hand, blows with blunt weapon rarely produce visible injuries to the palm. The number of defensive injuries is very important from the forensic point of view. A large number of defensive injuries on the victim suggest that the injuring lasted longer and that during the act of murder victim was conscious, suffered physical pain and fear. In this way, in the criminal proceedings the number of defensive injuries may be significant evidence of so-called cruel murder, which in legal terms is characterized by the intention of murderer not only to kill the victim, but also to inflict intense physical pain and mental suffering to the victim before dying.

Some injuries are by their character typical of murder, e.g. manual strangulation of the neck (throttling), manual occlusion of the nose and mouth (smothering), mutilating injuries caused by the blade or blunt end of a strongly swung, heavy mechanical tool (axe, hoe, crowbar, etc.) (Milovanović, 1979; Savić, 2002). Certain typical ways of suicidal or accidental injuring are rarely registered in murder cases (hanging, drowning, burns, being run over by rail vehicles, falling from a height). The very fact that, although typically suicidal or accidental, these injuries can also be homicidal, imposes the need to unquestionably and objectively determine their origin by performing a forensic autopsy. Especially since the mentioned types of injuries are also suitable for simulating suicide or an accident, when the killer injures the corpse of the previously killed victim posthumously and arranges all the circumstances to indicate a suicide or an accident. Cases of such simulated suicide and accidents can be overlooked unless an autopsy is performed, so the crime can remain undetected. Only with a timely and adequately performed forensic autopsy can it be possible to determine the viability of the stated injuries, establish the cause of death and, in correlation with other data obtained during the investigative procedure, indicate with certainty or probability the manner of violent death.

Examination of the suspected perpetrator of the murder

The examination of the suspected perpetrator of the murder should be carried out as soon as possible, if the perpetrator has been identified and arrested. A complete examination of the entire body, as well as the clothes and shoes that the perpetrator was wearing during the event in question, is necessary. The following important facts can be determined:

- injuries, primarily those inflicted by the victim on the attacker in defense; in some cases, the existence of certain injuries on the perpetrator, especially if they are numerous and severe, can help the court in the legal qualification of the criminal offense (ubistvo na mah, nužna odbrana);
- biological traces of the victim (blood, hair, saliva, etc.) on the perpetrator;
- determining the influence of ethanol and other psychoactive substances by chemical-toxicological analysis of blood and urine samples, if the perpetrator was found within a shorter period of time after the murder, i.e. until the metabolization and elimination of toxic substances from the body has not yet been completed.

The physical examination of the suspected perpetrator should be performed by a forensic doctor, preferably the one who performed the forensic autopsy of the victim's corpse. By correlating the findings on the victim and the attacker, significant information can be obtained about the course of the entire event in question. Unfortunately, in the area of Belgrade, this procedure is not systematically regulated in a satisfactory manner. Namely, in most cases, perpetrators of murder are examined only by clinicians employed in prison hospitals, and not by court doctors, who perform this examination mostly when investigative authorities insist on it. This kind of practice should be fundamentally changed.

Forensic medical expertise from the files

In addition to the autopsy, forensic expertise in cases of murder is, as a rule, carried out in the form of an expert report from the file. Such an expert opinion is based on the analysis of all the collected data mentioned in the files that the court provides to the expert, asking him in the order for the expert opinion specific questions to which he should answer. Such expertise can be requested both by the public prosecutor, during the investigative procedure, and by the judge, during the criminal procedure. Often in these situations there is a need to engage

experts from other specialties, e.g. of ballistics in the case of firearm injuries. We should strive for the forensic medicine and ballistics expert to cooperate closely during the expert examination, in order to evaluate the established facts as objectively as possible through the mutual exchange of information and give the court an adequate professional opinion.

The expert opinion should be performed by the forensic pathologist who also performed the autopsy of the victim, because he has the best insight into all the significant characteristics of the injuries found on the corpse. Unfortunately, this principle is often not respected in our judicial practice, because the CPC allows the prosecutor or the judge to choose an expert, that is, it does not oblige it to have the forensic pathologist who performed the autopsy to carry out the expertise from the files. I believe that such decision of the authorities is not correct and can negatively affect the quality of the expertise.

During the expert examination process, based on his experience and knowledge, the expert can help the court by providing answers to a series of questions that are important for assessing the character of the criminal offense and determining the punishment, i.e. whether the court will assess the act as a basic form of murder (Article 113 of the CC) or one of the types of serious murder (Article 114 of the CC) (*CC*, 2024; Božilović-Petrović, 2011; Jovašević, 2017). These are e.g. information about the possible injurious weapon, the method of injury (e.g. the distance from which the projectile was fired in the case of murder with a firearm), the mutual position of the victim and the attacker at the time of the injury, signs of attempts to defend the victim, the possibility of her moving and acting after the injury, the intensity of the physical pain and psychological suffering she suffered, the consequences of the previous injury as possible signs of earlier abuse (family violence), etc.

Discussing the importance of forensic medical expertise in the assessment of qualified murders, Pejaković (1991) singles out cases of murder in a cruel and insidious manner, while in other cases the qualification of the crime is mainly based on other means of evidence. Pejaković (1991) emphasizes that forensic medical experts should be especially careful when discussing the brutality of the way the murder was carried out, stressing that the large number of injuries on the victim should not be unconditionally understood as the perpetrator's desire to inflict suffering on the victim, but it is often the result of his emotional discharge. In the legal literature, it is noted that cruelty, as an objective element for the existence of the criminal offense of qualified murder,

does not only mean physical, but also psychological pain or suffering inflicted on the victim, which imposes on the court the need to hire not only a forensic expert, but also a forensic psychiatric expert. Homicidal injuries inflicted from behind the victim can indicate the insidiousness of the execution method.

The court certainly decides on intent (umišljaj) or negligence (nehat) to commit the crime of murder, as forms of subjective guilt of the perpetrator, but the number, localization and other characteristics of injuries in a large number of cases are facts of crucial importance for making this decision. This is particularly important for the determination of murder from the Article 115 of the CC (ubistvo na mah) and negligent deprivation of life (Article 118 of the CC), as the so-called privileged murders, which also include killing a child during childbirth (Article 116 of the CC) and taking life out of compassion (Article 117 of the CC) (*CC*, 2024). The presence and features of injuries on the murderer are also of essential importance for legal releasing of the perpetrator from the punishment in the cases of necessary defense (Article 117 of the CC) (*CC*, 2024),

In particular, it should be emphasized that in his work, the forensic medical expert should always be guided by objective medical facts, i.e. characteristics of injuries. The expert determines and qualifies the injuries from the medical aspect, and the court is the one that qualifies the offense from the legal aspect. The expert must always respect that limit, not venturing into the authority of the court with uncritical statements.

All the mentioned facts point to the conclusion that the forensic medical examination represents one of the most important means of evidence in the process of determining the murder, its complete clarification and definitive legal qualification. These complex tasks during investigative and criminal proceedings can only be successfully completed if there is close cooperation and constant mutual exchange of information between the authorities conducting the proceedings, the employees of the internal affairs service and forensic medical experts. Only such a way of working ensures the optimal determination of objective evidentiary facts, it should be strived for, striving to improve all forms of professional cooperation in future work.

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