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DISCUSSION ISSUES OF ASSESSMENT OF DATA OBTAINED BY USING SPECIAL KNOWLEDGE IN CRIMINAL PROCEEDINGS

Rasa ŽIBAITĖ – NELIUBŠIENĖ
Mykolas Romeris University
Maironio St. 27, LT-44211 Kaunas, Lithuania
E-mail: rasa.zibaite@mruni.eu
ORCID ID 0009-0006-1680-0223

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Abstract*. As the social environment develops, as science and technology improve, more and more attention in the evidentiary process is paid to the data obtained by using special knowledge. Without such data, the investigation of certain criminal acts or even making a final decision is unimaginable. It is important to realize that the evaluation of data obtained by using special knowledge, precisely because of its specificity, requires greater care, because data obtained by using special knowledge (forensic science) should be considered as personal evidence obtained by a person who had no (in)direct personal contact with the criminal act under investigation and the judge has the duty to assess the result based on certain special knowledge that he does not personally have. The analysis performed has shown that (first of all) the provisions of the case-law regarding the assessment of the conclusions obtained using special knowledge on the basis of private initiative provide reasonable grounds to consider the fact that, unfortunately, there is a derogation from the provisions of the principle of free assessment of evidence. It can also be assumed (secondly) that in the absence of factors determining the insufficient quality and reliability of the conclusion, the conclusion obtained and submitted by a private participant in criminal proceedings by way of the neutralizing mechanism should continue to be assessed as an advisory conclusion.*

Keywords*: special knowledge, reliability of evidence, conclusion of the private expert.*

Introduction

As the social environment develops, as science and technology improve, more and more attention in the evidentiary process is paid to the data obtained by using special knowledge. Without such data, the investigation of certain criminal acts or even making a final decision is unimaginable. As P. Kirk has pointed out: “Wherever he steps, whatever he touches, whatever he leaves, even unconsciously, will serve as a silent witness against him. [...] Physical evidence cannot be wrong, it cannot perjure itself, it cannot be wholly absent. Only its interpretation can be wrong. Only human failure to find it, study and understand it, can diminish its value”[1].

It is important to realize that the assessment of data obtained by using special knowledge requires greater care precisely because of its specificity because (first of all) data obtained by using special knowledge (*forensic science*) should be considered as *personal evidence* obtained by a person who had no (in)direct personal contact with the criminal act under investigation and (second) the judge has the duty to assess the result based on certain special knowledge that he does not personally have. Therefore, in addition to the general evidence assessment scheme, such data also contain additional elements (essentially formulated in the case-law) that strengthen the reliability of such data. This paper will discuss several of them.

Object of research: assessment of data obtained by using special knowledge in criminal proceedings.

Purpose of research: to disclose the relevant (essentially formulated in the case-law) aspects of the assessment of data obtained by using special knowledge by paying more attention to the results of the special investigation obtained on the basis of a private initiative.

[1] Erikas Kaukas (2012), The Issues of the Interpretation of Physical Evidence in the International Context. *Public Security and Public Order*, (7), 112-125.

Research tasks:

1. To discuss the aspect of the impartiality of the subject with special knowledge, namely a private expert, with regard to the dependence on other parties to the proceedings.
2. To discuss the relevant aspects (essentially formulated in the case-law) aspects of assessment of the reliability of the results obtained by using special knowledge, namely the results of the special investigation obtained on the basis of a private initiative.

Research methods: the document analysis is used to analyze the issues of legal regulation and case-law; the systematic analysis is used to compare legal provisions and case-law, the deduction analysis allowed defining specific problems arising in legal practice due to general requirements, whereas the generalization method helped to structure the whole and to present structured conclusions

Aspects of impartiality of "the competent witness" as a source of personal evidence

In procedural laws, the use of special knowledge is regulated in different chapters, for example, Section XIII Chapter Seven "Expert Opinion" of the Code of Civil Procedure, which is dedicated to this issue (Articles 212 – 219 of the Code of Civil Procedure lay down the performance of expert examinations and the appointment of experts, the presentation of questions to the expert, the duties and rights of the expert, the liability of the expert, the contents of the conclusion drawn up by the expert, the procedure of questioning of the expert, the assessment of the conclusion drawn up by the expert, and regulate the issue of ordering the supplementary or repeated expert examination), however, specific issues are also regulated in other Articles, for example, in Article 682 of the Code of Civil Procedure, which lays down the procedure of ordering the expert examination in enforcement proceedings.

Meanwhile, different sections of the Code of Criminal Procedure contain the following Articles: Articles 84–88 of the Code of Criminal Procedure (which lay down the concept of the expert, the rights, duties and liability of the expert, and the contents of the expert examination report), Articles 89–90 of the Code of Criminal Procedure (which lay down the concept of the specialist and the contents of the conclusion drawn up by the specialist), Articles 205–206 of the Code of Criminal Procedure (which lay down the procedure of examination of objects and the peculiarities of examination), Articles 208–211 of the Code of Criminal Procedure (which lay down the grounds and procedure of ordering the expert examination), Articles 284–285 of the Code of Criminal Procedure (which lay down the procedure of participation and questioning of the subject with special knowledge during the hearing of the case in court), whereas Article 286 of the Code of Criminal Procedure regulates the procedure of ordering and performance of the expert examination during the hearing of the case in court.

In criminal proceedings, special knowledge may be applying by the following two subjects: the expert (who complies with the requirements laid down in the Code of Criminal Procedure)[2] and the specialist (although the Code of Criminal Procedure does not lay down a requirement for the specialist to be included on the list of experts, however, the specialist is subject to certain competence and qualification requirements)[3]. Accordingly, the Code of Criminal Procedure lays down the following two forms of use of special knowledge: <...> *the expert examination report and the conclusion of the specialist drawn up on the basis of the*

[2] The expert is a person whose name is on the list of experts and who is ordered by the court to conduct a forensic expert examination, or any other person whose name is not on the list of experts, but who has the required special knowledge and who is ordered by the court to conduct a forensic expert examination in particular proceedings (Article 210 of the Code of Criminal Procedure).

[3] Criminal proceedings of the Supreme Court of Lithuania No. 2K-201-1073/2018 No. 2K-431/2010.

examination of objects. The procedure of ordering and performance of these procedural actions differ accordingly[4].

The subject who has special knowledge can be considered the expert witness in the broad sense. However, if opposed to the "authentic witness" (the witness "born together with the circumstances of the event" rather that directly affected by the criminal act or otherwise related to the commission of the criminal act[5]), the rules of irreplaceability[6] and authenticity[7] of the witness do not apply to the expert witness. Such witness could be described as "the competent witness", therefore, it is important to understand both the importance of competence (professional, occupational aspects) of the person who has special knowledge and the factors that help to ensure the quality and reliability of the examination that requires special knowledge.

It is believed that the successful of the expert's work depends on several factors, including not only the selection of the appropriate expert, but also the expert's skills in analyzing, evaluating, synthesizing and expressing the results obtained.[8] There is no doubt in the doctrine that the effectiveness of the expert examination also depends on the selection of the appropriate expert (specialist), i.e. on the special knowledge and skills held by him.[9] There is no doubt that the most significant factors influencing the process of formulating conclusions by the subject with special knowledge are the subject's qualification and competence. In international legal acts, on the basis of professional sovereignty, the duties of the forensic expert are divided into the following two groups: one of them includes the duties related exclusively to the personality of the forensic expert, i.e. the duty of the personal responsibility of the expert; the duty of confidentiality; the duty to take an oath; the duty to regularly improve (update) competence and *the duty to remain independent and impartial.*

In the context of the independence and impartiality of the subject with special knowledge as the factor contributing to the strengthening of the reliability of such data, attention should first be paid to the expert's independence from the parties to the process. Article 67 paragraph 2 of the Code of Civil Procedure stipulates that the expert may not participate in the hearing of the case if he is dependent on at least one of the parties or other persons participating in the proceedings due to his service or otherwise, or if he had performed a revision, audit or any other inspection the material of which was the basis for the institution of the civil case. Meanwhile, the Code of Criminal Procedure does not provide for any direct regulation on this issue. The

[4] Criminal proceedings of the Supreme Court of Lithuania No. 2K-201-1073/2018.
[5] Ažubalytė, R. (2016) et al. Criminal Procedure Law. *General Part: Textbook. Book 1 Vilnius: Centre of Registers*, 214-218; Cf. see Jurka R. (2009) The Witness and the Procedural Interests of the Witness in Criminal Proceedings. Monograph. *Vilnius: State Enterprise Centre of Registers*.
[6] Ažubalytė, R. (2016) et al. Criminal Procedure Law. *General Part: Textbook. Book 1 Vilnius: Centre of Registers*, 216 -217 („Irreplaceability characterizes the witness as a unique subject of the process. This feature cannot be denied by the fact that several (or a dozen) persons are often interrogated as witnesses and they give the same kind of testimonies about the circumstances that need to be determined. The fact that several witnesses repeat the same circumstances should not be considered as the basis for replacing one witness with another, but simply for deciding the sufficiency and/or reliability of their testimonies (data)").
[7] Ažubalytė, R. (2016) et al. *Criminal Procedure Law. General Part: Textbook. Book 1 Vilnius: Centre of Registers* ("The feature of authenticity indicates that the subject matter of the testimony given by the witness should usually be the data and the information based on the first source from which the witness became aware of the factual circumstances that have certain significance for the correct examination of the case. This feature also means that when a person who is neutral towards the circumstances of the case that are being determined and investigated, is questioned as a witness, such person is not bound by any motives or interests that are inseparable from, for example, the victim, the person suspected or accused of the commission of the crime.")
[8] Juodkaitė-Granskienė, G. (2011). Criminal Code of the Republic of Lithuania Is 10 Years Old / Chief Scientific Editor Gintaras Švedas. Vilnius: Centre of Registers, 459-472, 462.
[9] Juodkaitė-Granskienė, G. (2011). Criminal Code of the Republic of Lithuania Is 10 Years Old / Chief Scientific Editor Gintaras Švedas. *Vilnius: Registrų centras*. 459-472.

doctrine notes that the real impartiality of the subjects with special knowledge can be ensured only when they are independent participants in the criminal proceedings and their status does not overlap or coincide with the status of other participants in the proceedings, and when they are not related to other participants in the proceedings either personally or on the basis of any service-related, institutional relations.[10]

Thus, in order to ensure the impartiality of the specialist (expert), the examination that requires special knowledge should not be ordered to the person who is maintains employment-based relations with the state authority that has an independent material or procedural interest in the criminal case, which is realized after the acquisition of the procedural status (e.g., that of the civil claimant). Therefore, from the formal point of view, only the persons working in such institutions as the Forensic Science Centre of Lithuania would meet the requirement of independence.

In this context of the independence and impartiality of the subject who has special knowledge, it is worth paying attention to the discussions arising in relation to the examinations involving special knowledge and performed at the initiative of the private participant in the proceedings. It has been clarified in the case-law that following the adversarial principle, among other things, individuals must be given the opportunity to defend their interests in the criminal case by also using the results of the examinations performed on the basis of the private initiative.[11] In its turn, the European Court of Human Rights has drawn attention to the importance of the data obtained on the basis of the private initiative for the principle of equality[12].

The Supreme Court of Lithuania notes that "at the request of the accused (his defense counsel) or another participant in the proceedings, the examination of objects or documents significant for the investigation and hearing of the criminal act, which has been performed by a private expert or any other person with special knowledge, is not the examination of objects within the meaning of Article 205 of the Code of Criminal Procedure, and the document drawn up by such persons is not recognized either as a report of the expert examination (Article 88 of the Code of Criminal Procedure) or as a conclusion of the specialist (Article 90 of the Code of Criminal Procedure), but is examined and assessed as a document – an advisory conclusion drawn up by a person who has special knowledge (Articles 95–96 of the Code of Criminal Procedure) (cassation rulings in criminal proceedings No. 2K-521/2008, 2K-465/2010, 2K-165/2013, 2K-337/2014). An advisory conclusion may be recognized as evidence in criminal proceedings if it meets the general and special requirements for such type of evidence.

Therefore, two positions are formed in the doctrine based on this practice. On the one hand, it is understandable that the conclusions obtained on the basis of the private initiative have limited binding nature for the court and according to the prevailing case-law, these conclusions cannot be assessed as conclusions of the specialist or reports of the expert examination because they are drawn up after receiving the data of one of the parties, representing one of the parties, and their impartiality and objectivity may thus be called into

[10] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University*, 363-379.

[11] Gintaras, G. (2014). Value Priorities in Criminal Proceedings, *Vilnius: Centre of Registers,*160.

[12] Case of Khodorkovskiy and Lebedev v. Russia (No. 2), Applications nos. 51111/07 and 42757/07; 14/05/2020. The European Court of Human Rights has pointed to the problems of assessment of such special knowledge obtained on the basis of a different initiative by noting the following: "the court of first instance also stated that the report of the expert is not within the competence of "the specialist". Such a statement amounts to a general refusal to admit any evidence given by "the specialist" intended to deny the conclusion of the expert, which, in the Court's view, is incompatible with the principle of equal treatment of the parties.

question as impartiality is nevertheless affected by the interest in helping the person who is seeking help[13]. Other researchers are concerned that under such case-law of the Supreme Court of Lithuania, courts are obliged to assess not only the completeness, reliability and validity of the information obtained through the use of special knowledge, but also the subjects who performed the examinations and presented the conclusions, based on the "appropriateness" of such subjects. Namely: the procedural value of the conclusion is determined on the basis of the fact whether the conclusion was submitted by a public or a private subject with special knowledge.[14] Therefore, the conclusion submitted by a private specialist or expert, regardless of its completeness, reasonableness and scientific nature, does not acquire the same procedural status as the document drawn up by a specialist or expert ordered by the prosecutor or the court.[15] Procedural documents prepared by an expert or specialist *a priori* are given the status of "more valuable/important" (evidence of greater probative value) than the data obtained on the basis of the private initiative (advisory conclusion).[16]

According to the case-law, in cases where the advisory conclusion contradicts the conclusion of the specialist or the report of the expert examination available in the criminal case, the persons who submitted the conclusion of the specialist or the report of the expert examination and the advisory conclusion are usually summoned to the court session to remove the contradictions"[17]. The Supreme Court of Lithuania also develops the case-law that in the event of existence of any contradictions between the advisory conclusion and the conclusion of the specialist/expert, the court must take measures to remove them by questioning the persons who submitted the conclusions, and if the contradictions cannot be removed, the court must order a supplementary or repeated expert examination. Thus, as the doctrine points out, there exists a predetermined maximum evidentiary power that can be "achieved" by a so-called advisory conclusion drawn up by a private specialist or expert, which is the ordering of a repeated expert examination, usually to be performed by the same state expert body whose specialist's or expert's conclusions were disputed[18].

In its case-law, the Supreme Court of Lithuania emphasizes that "<...> As a general rule, the evidentiary value of the report of expert examination (conclusion of the specialist) obtained in accordance with the procedure established by the Code of criminal Procedure cannot be denied solely on the basis of the advisory conclusion: "<...> *it has been clarified in the case-law that documents obtained at the initiative of the participants in the proceedings, which were drawn up using special knowledge, are considered advisory conclusions (cassation rulings in criminal proceedings No. 2K-465/2010, 2K-525/2010). Such conclusions are a different type of evidence than the conclusions of the specialist or the reports of expert examinations obtained*

[13] Paužaitė-Kulvinskienė, J., Juodkaitė-Granskienė, G., Pajaujis, V. "The Duties and Liability of the Forensic Expert and the Resulting Sanctions. Lithuanian Context and European Prospects", 312.
[14] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University,* 363-379.
[15] Gušauskienė, M. (2019) Issues of Independence and Competitive Right of Expert Activities, Criminalistics and Forensic Expertology: Science, Studies, Practice. 15. D. 2 / compiled by Juodkaitė-Granskienė, G. *Kaunas: Forensic Science Centre of Lithuania,* 90-106
[16] Gušauskienė, M. (2019) Issues of Independence and Competitive Right of Expert Activities, Criminalistics and Forensic Expertology: Science, Studies, Practice. 15. D. 2 / compiled by Juodkaitė-Granskienė, G. *Kaunas: Forensic Science Centre of Lithuania,* 90-106
[17] Criminal proceedings of the Supreme Court of Lithuania No. 2K-122-303/2020, No. 2K-165/2013, No. 2K-337/2014, No. 2K-211-895/2018
[18] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University,* 363-379

in accordance with the procedure laid down in the Code of Criminal Procedure. Advisory conclusions must be examined at a court hearing, but such conclusions alone cannot deny the probative value of the conclusions of the specialist or the reports of expert examination obtained in accordance with the procedure laid down in the Code of Criminal Procedure (cassation ruling in criminal proceedings No. 2K-251-507/2016). In the case under consideration, the conclusions of P.P. obtained at the initiative of the defense were properly verified at the court hearings. <...> P. P. was questioned as a specialist and gave explanations in the same manner as expert D. V. The court of appellate instance noted that in the advisory conclusion, forensic medicine specialist P. P. insufficiently described the health data of V. M. and A. Š. as he did not have the case material and did not examine it, therefore, there existed no grounds to rely on the conclusions of that specialist (cassation ruling in criminal proceedings No. 2K-208-976/2017) <...>".[19]

Thus, such provisions of the case-law regarding the assessment of the conclusions drawn up using special knowledge on the basis of the private initiative, when it is indicated that such advisory conclusions alone cannot deny the probative value of the report of expert examination (conclusion of the specialist) obtained in accordance with the procedure laid down in the Code of Criminal Procedure, also that if it is not possible to remove the contradictions between the advisory conclusion and the conclusion of the specialist/ expert, it is necessary to order a supplementary or repeated expert examination (which is often ordered to the same state institution), etc., provide reasonable grounds to believe that, unfortunately, there is a derogation from the provisions of the principle of free assessment of evidence.

Several relevant aspects of assessment of the reliability of the results obtained by using special knowledge

As noted in the case-law, when assessing a report of expert examination or a conclusion of the specialist, it is necessary to review and assess them not only in terms of their connectivity and admissibility, but also in terms of some other circumstances that have an effect on their reliability, namely: the scientific validity and appropriateness of the methods applied; the completeness, sufficiency and quality of the material provided to the expert or specialist; the correctness of the initial data provided to the expert or specialist; [...] and etc.[20]

The analysis of the case-law as one of the problematic areas when considering the issue of assessment of the reliability of special examinations, has made it possible to distinguish the scientific validity and appropriateness of the research methodologies used. This aspect is especially relevant when assessing the result of a special examination obtained on the basis of the private initiative. The doctrine states that subjects who provide a conclusion should use only scientifically based research methodologies and instruments, i.e. it is allowed to use only such tools and methods that are based on the scientifically sound regularities, processes and phenomena, and ensure reliable and objective results.[21] We can also find the opinion that the tools and scientific methodologies used in the investigation of criminal acts should be approved

[19] Criminal proceedings of the Supreme Court of Lithuania No. 2K-208-976/2017, also in 2019 March 28 Review of the application of the norms of the Criminal Procedure Code regulating the use of special knowledge in court practice. Court practice, (50), https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/68

[20] Criminal proceedings of the Supreme Court of Lithuania No. 2K-2/2005, No. 2K-316-699/2015, No. 2K-206-693/2017, No. 2K-208-976/2017, No. 2K-97-976/2020

[21] For more information, see Foster, K. R.; Huber, P. W. (1999). Judging science. Scientific knowledge and the federal courts. *Cambridge: MIT Press.*

in accordance with the appropriate procedure and a register of validated and recommended methodologies should be compiled[22].

As noted in the doctrine, the Law of the Republic of Lithuania on Criminal Procedure does not directly lay down the requirements that the methodologies and research techniques must be scientifically validated, that they must ensure the completeness, correctness, authenticity and adequacy of the results obtained, however, such requirements can be implied from the contents of Article 1 of the Code of Criminal Procedure, which lays down the purpose of criminal proceedings.[23]

However, there are authors who claim that the verification of the reliability of the conclusion of the subject with special knowledge does not mean that the court must check the validity and quality of the methodologies themselves based on their examination and the modern correspondence of the development of special knowledge in that area, therefore, the court must check whether there is a basis for the choice of research methodologies indicated in the conclusion, and in the event that there is no such basis, the court may recognize the expert examination as groundless.[24] It is also important to emphasize that the court which is hearing the case and to which the expert report is submitted, cannot indicate what specific methods of scientific research should be applied in order for it to be carried out with quality. The subject who has special knowledge is personally responsible for the appropriate quality of the conclusion.

In this context of research methodologies, it is worth mentioning the ruling of the Supreme Court of Lithuania, which dealt with the issue of non-disclosure of the research methodology used in the conclusion: "[..] assessment of the research methodology in the conclusion of the specialist (the scientific validity and appropriateness of the methods used) is only one of the aspects which must be taken into account by the court when assessing the reliability of the conclusion of the specialist available in the criminal case as the appropriate source of evidence, which meets the requirements of Article 20 of the Code of Criminal Procedure, therefore, *the mere non-disclosure of the research methodology*, contrary to what is claimed by the convicted R. P. and his defense counsel, *does not* in itself *constitute the sufficient* grounds in the present criminal case *to assess the conclusion* submitted by specialist L. L. *as being groundless or unreliable* within the meaning of Article 20 of the Code of Criminal Procedure. At this point, it should also be noted that the court of appellate instance has recognized that non-disclosure of the methodology of examination of R. P.'s comments should be considered one of the shortcomings of the conclusion presented to the court, however, taking into account the contents of the explanations given by the specialist in court, the fact that in the this particular case, R.P's guilt is based not only on the conclusion presented by L.L., but also on other evidence collected and verified in the case, this deficiency is not considered to be essential."[25]

The general rule provides that the reliability of the conclusion given by the subject with special knowledge is assessed not only by analyzing its contents and structure, but also by comparing it with other evidence. For example, the case-law considers the issue of whether the

[22] Juškevičiūtė, J. (1998). The Use of Special Knowledge in the Investigation of Crimes: Status and Prospects. *Doctoral Dissertation. Social Sciences. Law. (6F). Vilnius*, 55.
[23] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University*, 363-379.
[24] Россинская, Е. Р. (1998). Судебная экспертиза в уголовном гражданском арбитражном процессе (с. 50). Москва: Норма.
[25] Criminal proceedings of the Supreme Court of Lithuania No. 2K-206-693-2017.

conclusions of subjects with special knowledge can be compared with each other (not only with other data in the case). When considering such situation, the Supreme Court of Lithuania has noted the following: "It should be noted that for a detailed comparison of the conclusions presented on the basis of special knowledge, it is necessary that they meet several essential requirements, i.e. all experts (specialists) must examine the same initial material (objects of examination), *apply the same research methods* and procedures, and answer the same questions."[26]

Thus, such case-law developed by the Supreme Court of Lithuania raises the issue that the comparison of conclusions presented by subjects with special knowledge (for example, in case of defense, when seeking to deny the conclusion ordered by the prosecution or the court and obtained on the basis of the private initiative) is hardly possible in certain cases because in order for the conclusions to be compared, the expert must apply identical research methods and procedures, whereas the List of Professional Secrets of the Forensic Science Centre of Lithuania contains "expert examination methodologies, except the ones that are announced in public" as one of the professional secrets[27]. The courts, in turn, tolerate this practice of non-disclosure of the methodology by pointing out that it is a deficiency of only one of the elements of the quality of the conclusion.

Another problematic aspect of assessment of the result of the examination involving special knowledge and obtained on the basis of the private initiative (and not only this alone) is related to the contents and the scope of the material presented to the subject.

The importance of the initial material submitted to the expert for the reliability of the result of special examination is also emphasized in the case-law of the Supreme Court of Lithuania: "the initial data (objects subject to examination) examined by the expert or specialist and used to formulate answers to the questions put to him, are of great importance for the quality of the results of special examination and for the completeness of the conclusions"[28]

In certain cases, their quantity is insufficient to obtain a conclusion, and the specialist may refuse to provide a conclusion on certain issues: "The conclusion of the specialist shows that the specialist relied on the information recorded in the Record of Inspection of the Road Traffic Accident of 17 February 2015, which stated that double 11m brake marks had been recorded; the diagram of the scene of the road traffic accident of 17 February 2015; Photo Table No. 1 enclosed to the Record of Inspection of the Road Traffic Accident. When describing the material presented to him, the specialist indicates which data are recorded in which document presented to him and which are not. It should be noted that having examined and assessed the available data, the specialist may conclude that certain circumstances cannot be determined."[29]

Another problem encountered in practice is the quality of the data on which the conclusion of based. There are cases when conclusions that require special knowledge are formed on the basis of the data of questionable quality (not only in terms of the contents, but also in terms of the form): "In the Statement of Defense, the Prosecutor indicates that during the hearing of the case on merits, the Ignalina region District Court examined all evidence collected, also the conclusion of specialist V. M., also questioned him during the session of the court where the latter stated that while drawing up the conclusion he relied on the photographs presented by the defendant's defense counsel, those photographs were undated, they recorded

[26] Criminal proceedings of the Supreme Court of Lithuania No. 2K-233-1073/2020.
[27] List of Professional Secrets of the Forensic Science Centre of Lithuania: https://ltec.lrv.lt/lt/teisine-informacija/teises-aktai (Accessed: 17 April 2023)
[28] Criminal proceedings of the Supreme Court of Lithuania No. 2K-233-1073/2020.
[29] Criminal proceedings of the Supreme Court of Lithuania No. 2K-97-976-2020.

vehicle damage, brake marks and diagram of the event. The specialist explained that he did not have the pre-trial investigation material. Therefore, the prosecutor believes that the court was correct when it refused to rely on the said conclusion because the photographs were provided to the specialist without compliance with the procedure applied in criminal proceedings, the time of taking of the photographs was not established and the conclusions made by the specialist contradict the conclusions made in other expert examinations."[30]

Thus, "the quality of expert examination also depends on the initial data presented to the expert"[31]. And "the poor quality" of initial data (in different aspect: limitation of the methodology, insufficiency of information, etc.) determines not only the unreliability of the results obtained by suing special knowledge, but also the possible incorrectness of the final decision of the court.

Conclusions

The provisions of the case-law regarding the assessment of the conclusions obtained using special knowledge on the basis of the private initiative, when it is stated that the advisory conclusion alone cannot deny the probative value of the conclusions of the specialist or the reports of expert examination obtained in accordance with the procedure laid down in the Code of Criminal Procedure, also that when the contradictions between the advisory conclusion and the conclusion of the specialist/expert cannot be removed, it is necessary to order a supplementary or repeated expert examination (which is often performed by the same state institution), etc., provide reasonable grounds to consider the fact that, unfortunately, there is a derogation from the provisions of the principle of free assessment of evidence.

It can be assumed that in the absence of factors determining the insufficient quality and reliability of the conclusion, the conclusion obtained and submitted by a private participant in criminal proceedings by way of the neutralizing mechanism should continue to be assessed as an advisory conclusion.

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5. Criminal proceedings of the Supreme Court of Lithuania No. 2K-431/2010.
6. Criminal proceedings of the Supreme Court of Lithuania No. 2K-122-303/2020,
7. Criminal proceedings of the Supreme Court of Lithuania No. 2K-165/2013,
8. Criminal proceedings of the Supreme Court of Lithuania No. 2K-337/2014,
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[30] Criminal proceedings of the Supreme Court of Lithuania No. 2K- 477/201019.
[31] Juodkaitė-Granskienė, G. (2011). Criminal Code of the Republic of Lithuania Is 10 Years Old / Chief Scientific Editor Gintaras Švedas. Vilnius: Registrų centras, 459-472, 462.

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Adresas: Mykolo Romerio universiteto Viešojo saugumo akademija Maironio g. 27, LT- 44211 Kaunas
El. paštas: vsa@mruni.eu