

PROBLEMS WITH THE MANAGEMENT OF THE QUALITY OF FORENSIC EXPERT REPORTS IN POLAND – BASED ON THE EXAMPLE OF PSYCHOLOGY OF HANDWRITING

Marek LEŚNIAK^{1*}, Barbara LEŚNIAK²

The Institute of Law, University of Silesia in Katowice; marek.lesniak@us.edu.pl,
ORCID: 0000-0002-5049-7225

The Institute of Psychology, University of Silesia in Katowice; barbara.lesniak@us.edu.pl,
ORCID: 0000-0002-1204-0988

* Correspondence author

Abstract: The existing system of management of the quality of expert reports in Poland has serious flaws on key points. It lacks appropriate verification of experts who are put on the lists of expert witnesses (such lists are maintained by presidents of regional courts). It also lacks adequate supervision of forensic experts opinions in particular court cases. The authors illustrate these problems by an example of forensic experts who work in the area of psychology of handwriting. How many experts in the field of psychology of handwriting are put on the lists all over Poland? What do they state in their opinions? How do courts treat and supervise such experts' reports in particular cases? The authors place the issues in the context of controversy attributed to the methodological aspect of psychology of handwriting.

Keywords: management of quality, reports of forensic experts, psychology of handwriting.

Introduction

The authors of the paper were inspired to undertake this research by the information about courts consulting experts in the field of “psychography” appearing in the press and on television. In the context of the current state of knowledge regarding graphopsychology (it is difficult to separate “psychography” from graphopsychology, which is a branch of science), the possibilities of the practical use of knowledge on the relationships between the formal features of a text and the psychological traits of its author, which are presented in the media, are not justified in the light of the results of current scientific research. The functioning of these expert opinions in the judiciary may be interpreted as a manifestation of a lack of appropriate verification in terms of entering court experts into lists maintained by presidents of

regional courts, as well as lack of adequate quality control of expert opinions in the proceedings conducted on the basis of the law.

Therefore, the authors were looking for information that would allow them to answer the following questions: are psychography experts entered in the lists of court experts maintained by presidents of regional courts in Poland? If so, how many experts in the field are entered in the lists of court experts in Poland? In the practice of the Polish judiciary, are expert opinions issued in the field of psychography used in the proceedings conducted pursuant to the law?

Background

People who carry out analyses and deliver training courses in psychography post plenty of information online about the scope of the data that can be provided by means of psychographical analysis. According to them, analysing handwriting makes it possible to determine whether someone is: “responsible”, “communicative”, “kind”, “creative”, “reliable”, “dishonest”, “resilient to stress”, and more. Among other things, they offer help in determining whether someone is a suitable candidate for a particular job or for marriage, as well as assistance in solving marital conflicts or problems with children. They undertake to assess the emotional state of the author of a handwritten text. They offer training courses whose participants can later perform handwriting analyses on their own. Such “expert opinions” may completely change the lives of the clients or other people described in them, and they may expose all of them to various negative consequences. How do such findings relate to scientific research results?

Traditionally, there are three areas of handwriting analysis: examinations in terms of identification, pathology and psychology (Leśniak, 2012). The first type of analysis is a comparative one, aimed at determining whether all the texts under comparison have been written by the same person. The aim of analysing handwriting pathology is to substantiate the impact that the mental or physical state of the author (e.g. a mental or somatic disease) may have had on the text. The examination of handwriting in terms of psychology concerns the relationship between the formal features of the text and the specific psychological traits of its author. These relationships should be identified in empirical studies that meet the methodological standards of psychological research. The issue of scientific quality of the methodologies used in court expert opinions always involves referring to empirical research results (Leśniak, 2012b; Konieczny, Widła, 2017). The level of scientific quality of a methodology (the authors regard this feature as constant and not dichotomous) depends on two factors: the level of its standardization and basing the standards on empirical research results, and the level of knowledge regarding the error margin of the methodology.

The methodology should also bear a name that has obvious connotations with it. Currently, few graphopsychology methodologies take into account the empirical studies conducted in relation to the Polish population. They include a methodology for determining the psychological gender of the author of a handwritten text developed by T. Widła (Widła, 1986), and the methodology for determining the level on the introversion and extraversion scale (Górska), the latter being more difficult to apply. Relevant literature draws attention to the existing problems of graphopsychological research (Ceccarrel, Gawda, 2014), in particular to the issue of the connections between individual systems of handwriting analysis and external psychological theories concerning human personality or basing them on one's own concepts of the psychological functioning of a human being. Difficulties in comparing the results of this type of studies are caused by different conceptualization of psychological features on the basis of different personality theories, as well as different ways of operationalization of handwriting variables. Not only is it debatable to what extent the personal and emotional qualities of an author of a handwritten text are reflected in his or her handwriting, it is also uncertain whether they are reflected in it all. According to B. Gawda "the process of writing/drawing may engage some aspect of personality and vice versa - an emotional experience may engage a motor process", but "this does not mean that an experience of emotion or a disclosure of a personality trait is reflected in a graphomotor gesture" (Gawda, 2018, pp. 131-132). It is also noted that "the graphical characteristics of handwriting are formed as a result of the cooperation of many different areas of the brain; the contribution of each area to the appearance of handwriting changes depending on a given task being performed, along with the automation process of the writing reflex and more. On the other hand, personality, which is difficult to define at the psychological level, is practically undefinable at the level of neurobiological mechanisms" (Gawda, Szepietowska).

Certainly, tools of psychological evaluation (also from psychology of handwriting) are developed in specific conditions and cannot be transferred to other populations (other cultural circumstances, other systems of alphabet) without proper adaptation studies. Methods developed in other countries (for example England, France, Spain or Italy) cannot be applied to the population of Poland without changes. The adaptation of such tools requires time-consuming research, undertaken with respect to a large segment of people and a large number of manuscripts. In Poland – with the exception of the two above-mentioned methods – there are no methods of psychological analysis of handwriting adapted to the local population. Therefore, there are no properly standardized methods with known error rate that would allow experts to indicate such features of writers, as "responsible", "communicative", "kind", "creative", "reliable", "dishonest" or "resilient to stress". It also raises the question of what "kind" and "dishonest" even means.

Therefore, in general, besides the indicated exceptions (including the determination of the gender of the author of a handwritten text), there is no scientific basis for perceiving "psychographological" methodologies in Poland as "scientific" in any degree. In the Polish

legal system expert methodologies do not have to be scientific. Expert opinions, prepared with the use of different methodologies which are either scientific to some extent or not scientific at all, are subject to the same evaluation conducted by a procedural decisionmaker, and may be used as evidence in any proceedings conducted on the basis of the law. The opinions prepared by experts with the use of scientific methodologies (which, referring to the argument above, are appropriately standardized and their error margin is known) do not have a formal advantage over the opinions which refer primarily to the experience and intuition of the expert and are prepared without the application of methodologies based on the results of empirical research. The procedural decisionmaker should, however, take into account the fact that an expert opinion prepared using scientific methods is transparent and subject to inspection by another expert within the scope in which it is scientific. It is not possible to verify the opinions whose authors refer only to their own experience. It is also not rational for procedural bodies (particularly prosecutors and judges) to make decisions based on the findings of experts who are unable to indicate the level of accuracy of the methodologies used.

In Poland, a court expert is primarily a person who has been entrusted with issuing an opinion in a specific proceeding; it is, therefore, a name of a procedural role (Widła, 1992). In the light of Article 193, § 1 of the Act of 6 June 1997 – The Code of Criminal Procedure (consolidated text: Dz.U. /Journal of Laws/ of 2018, item 1987, as amended), “If the determination of circumstances of significant importance for the resolution of the case requires special knowledge, the court shall consult an expert or experts”, and in accordance with 278, § 1 of the Act of 17 November 1964 – The Code of Civil Procedure (consolidated text: Dz.U. /Journal of Laws/ of 2019, item 1460, as amended) “In the event that some special information is required, the court, having heard the petitions of the parties as to the number and selection of experts, may summon one or more than one expert to testify”. In the context of the research results reported below, it is worth reminding that in Poland a private expert opinion (an opinion commissioned by parties to the proceedings, and not as a result of a decision of the procedural decisionmaker) cannot replace a court-appointed opinion of an expert (even if its author is a so-called expert entered in the list). However, it may play an important role as an information justifying the appointment of a court expert (in a situation where a court expert's opinion was not issued before in the proceedings), appointment of an expert to submit a supplementary opinion or appointment of another expert (in a situation where, in the light of a private expert's opinion, the court expert's opinion which has already been issued in the case has significant defects). On the other hand, at present, the author of a private expert opinion does not bear any responsibility for misrepresentation (such responsibility is borne solely by a court expert). In the case of dishonest experts, private expert opinions may be used to prolong court cases. The term “court expert” is also used with reference to persons entered on the lists maintained by presidents of regional courts (pursuant to the Regulation of the Minister of Justice of 24 January 2005 on court experts; Dz.U. /Journal of Acts/ of 2005, item 133). According to § 12, point 1 thereof, a person who is to be appointed as a court expert: must exercise their civil

and civic rights in full, be over 25 years of age, have theoretical and practical knowledge of a particular field of science, technology, arts, crafts or other skills to which the court appointment pertains; must guarantee proper performance of their duties as an expert; must consent to being appointed as an expert. The responsibility of verifying the knowledge and experience of experts prior to entering them in the list lies with the president of a regional court. The problem of the absence of proper verification of the above has been noted, for example in the document of 3 February 2017 “Legal notice on the results of an audit carried out by the Polish Supreme Audit Office [NIK]” (informacja_bl3.pdf) The Supreme Audit Office ascertained “ineffective use of supervision tools, lack of a uniform standard of IT tools, too far-reaching freedom of court presidents in categorizing specializations of experts” and it also found that “the existing regulations do not guarantee the inclusion of persons with the highest professional qualifications in the lists of court experts. The qualifications which a candidate for a court expert must possess in the relevant field of specialization are not specified, nor is the manner in which their qualifications are to be verified by the presidents of the regional courts”.

Methods and results

At the first stage of the research, the authors used the method of archival data analysis. The subject of the analysis were all lists of court experts maintained by the regional courts in Poland. As there are 45 regional courts in Poland, the analysis covered 45 lists of court experts, valid as at 30 August 2019. In the aspect of the categorization of expert specializations, numerous differences were found. On the lists of experts maintained by the above-mentioned courts, there were no uniform specializations (there are no nationwide standards in this respect). In the case of two courts, the term “psychography” appeared directly on the lists in the specialization section. In the case of four lists, there were no specialization sections or categories, and the term “psychography” appeared in the “expert’s specialization” column.

The authors found “psychography” experts on the lists of 41 regional courts. The situation at individual regional courts is as follows: the Regional Court in Białystok (two experts from the field of „psychography”), the Regional Court in Bielsko-Biała (two experts), the Regional Court in Bydgoszcz (one expert), the Regional Court in Częstochowa (two experts), the Regional Court in Elbląg (absence of this kind of experts), the Regional Court in Gdańsk (one expert), the Regional Court in Gliwice (one expert), the Regional Court in Jelenia Góra (four experts), the Regional Court in Kalisz (four experts), the Regional Court in Katowice (three experts), the Regional Court in Kielce (two experts), the Regional Court in Konin (one expert), the Regional Court in Koszalin (one expert),

the Regional Court in Kraków (one expert), the Regional Court in Krosno (one expert), the Regional Court in Legnica (two experts), the Regional Court in Lublin (two experts), the Regional Court in Łódź (absence of this kind of experts), the Regional Court in Łomża (one expert), the Regional Court in Nowy Sącz (one expert), the Regional Court in Olsztyn (one expert), the Regional Court in Opole (absence of this kind of experts), the Regional Court in Ostrołęka (one expert), the Regional Court in Piotrków Trybunalski (one expert), the Regional Court in Płock (one expert), the Regional Court in w Poznań (absence of this kind of experts), the Regional Court in w Przemyśl (one expert), the Regional Court in Radom (one expert), the Regional Court in Rzeszów (one expert), the Regional Court in w Siedlce (one expert), the Regional Court in Sieradz (one expert), the Regional Court in Słupsk (one expert), the Regional Court in Suwałki (one expert), the Regional Court in Szczecin (one expert), the Regional Court in Świdnica (one expert), the Regional Court in Tarnobrzeg (one expert), the Regional Court in Tarnów (one expert), the Regional Court in Toruń (one expert), the Regional Court in w Warszawa (one expert), the Regional Court in Warszawa-Praga in Warszawa (one expert), the Regional Court in we Włocławek (one expert), the Regional Court in Wrocław (one expert), the Regional Court in Zamość (one expert), the Regional Court in w Zielona Góra (one expert).

There are only 11 names of experts on “psychography” on the 45 lists of the regional courts in Poland. One expert is a “record-breaker”; she appears on 38 lists. The second position is held by an expert present on nine lists. Apart from them, one expert can be found on three lists, four experts appear on two and four experts can be found on one list “only”. In the case of nine experts, “psychography” is one of their many areas of expertise (it is most frequently accompanied by examination of documents or identifying examination of handwriting).

Experts describe their qualifications in a variety of ways. They most often use the terms “psychography” or “psychological examination of handwriting”. There are also phrases: “creating a psychological profile on the basis of handwriting”, “psychological examination of handwriting”, „psychological examination of testator’s state of consciousness at the time of preparing his or her last will”. In the context of the real capacity of handwriting examinations the latter is particularly bizarre.

The second stage of the research consisted in a series of case studies. In order to determine whether courts refer to psychographical research results, six cases were found in which the statements providing the reasons for court's judgments included “an opinion issued by an expert in psychography”. The Portal for the Decisions of the Common Court was used to search for the cases in question. Below are presented a few examples:

1. In the case with the file reference number I Ns 711/12, the District Court in Dzierżoniów refused to admit evidence in the field of psychography, a psychological analysis of handwriting and a pathology analysis, arguing that “psychography is not a classified scientific discipline. It is a method used in psychological diagnosis, which

offers a possibility to analyze a person's personality based on their handwriting. However, the subject matter of these proceedings was to determine whether the document submitted by the participant, entitled: "legacy", had been handwritten and signed by the testator". However, in the further part of the court's ruling, the scopes of opinions related to the psychology and pathology of handwriting were mixed up.

2. In the case with the file reference number I Ns 168/15, the District Court in Ciechanów stated, also in the context of an opinion issued in the field of psychographology, that the signature placed on the will "did not indicate the state of loss or limitation of consciousness, lack of freedom of expression, pressure from third parties or the existence of any mental disorders", and that "the preserved permanent arrangement and regularity in the drawing of graphisms indicate that the testator prepared the will in the state of full awareness, in a thoughtful manner, in peace and quiet".
3. In the case with the file reference number II C 150/10, the Regional Court in Katowice dismissed the claimant's motion to admit evidence in the form of an expert graphologist's opinion "in order to determine the claimant's ability to make a valid and effective declaration of will regarding the content of the contract, emphasizing that psychographology deals with the assessment of a person's personality based on the analysis of their handwriting" and may not fall within a competence of a psychiatrist with regard to "findings as to the mental state of the person performing a disputed legal act".

Discussion

In the light of the analysis of the so-called lists of experts currently maintained by 45 regional courts in Poland, it was found that the experts' specializations were not standardized. The same names of fields and categories appeared only at some courts. Therefore, the situation indicated earlier by inspection authorities (the report from an audit conducted by the Supreme Audit Office mentioned above) and referred to in the relevant literature (Leśniak, Ławrentjew) has not changed. In the majority of courts (in forty-one out of the total number of forty-five) there are experts in "psychographology". The field sometimes functions as the name of a separate editorial unit (field) on the list of experts; however, it is more often provided next to the specialization of a particular expert (usually next to a different type of research on handwriting). This is not justified by the current state of scientific knowledge, because apart from two methodologies (concerning relatively narrow fields – determining the sex and the level of extroversion of the author of a text, whereby the latter concerns only one theory of personality), there are no other methodologies in Poland that would be properly standardized,

adapted to the Polish population and with a known margin of error. That is why, in most cases, the findings of experts in this field are not based on methodologies that are scientific to some extent, they are not transparent, and they are based solely on the experience or intuition of the expert. Naturally, the procedural bodies may use such expert findings as part of their free assessment of evidence, but they must be aware that these findings are unlikely to be subject to verification and the level of their accuracy is unknown. The data collected in this study show that there is a relatively small group of 11 people entered in the lists of psychophysiological experts in Poland. In principle, two persons appear on the majority of lists of experts in Poland (thirty-eight and nine times, respectively). The information gathered indicates flaws in the management of quality control of expert opinions, in particular as regards the maintenance of court expert lists.

It is also worth viewing the situation of experts in “psychophysiology” from the ethical perspective. There is an increasing number of studies on the ethical aspects of playing specific roles in legal proceedings (Kuzior), including the role of court experts (Yadav, Solodov). It has been noted (Solodov) that experts “have great professional, as well as moral and ethical responsibility for the outcomes of their work” and that they should: “perform their professional duties conscientiously, maintain objectivity, strive for continuous professional development, broaden and constantly verify their knowledge, be self-critical (...)”. In this context, a psychophysiological expert should be aware of the limitations of the methodologies he or she uses. Not only in the context of the role of a court expert. In the light of the possibilities of methodologies used by the experts in Poland, advising people whether they would be a good match for someone or a suitable employee for a given position on the basis of the appearance of their handwriting is not fair. In the role of court experts, the same people may use the same methodologies to determine what mental state a person was in while writing a text. In the authors’ opinion, the court expert’s work ethic (as well as the ethic of an expert issuing an assessment in a given area in general) requires them to at least inform their potential clients whether the methodologies used by them are properly standardized in the light of the results of empirical research, or they are based solely on their own experience or the trust they. A qualitative analysis of the cases available on the public portal for court rulings justifies the claim that the opinions of experts in graphopsychology appear, although relatively rarely, in legal cases conducted in Poland. They may act as opinions of court experts (and are mentioned in the statements providing the reasons for rulings), they may be submitted as private expert opinions; parties refer to them in their motions for evidence (but these motions are rejected by court). In the analyzed cases, the judges usually did not have the knowledge necessary to assess the evidence. It has been noted that the findings in the field of graphopsychology are in practice confused with the findings in the field of handwriting pathology (e.g. in the context of the mental condition of the testator at the time of making the declaration of will). It is worth mentioning that while the findings in the field of handwriting pathology cannot replace the opinions of expert psychiatrists or psychologists in civil

proceedings, they may (provided that cognitive research is carried out correctly) provide a psychiatrist or a psychologist with information relevant to their official opinions on the case.

Conclusions

It is a fact that the majority of the lists of court experts include people specializing in psychography, and in specific cases opinions of court experts in forensic psychography are issued and taken into account by courts while establishing factual findings. It happens despite the fact that there are no methodologies (except for a few) with known error rate, which have been adjusted to the population of Poland and standardized properly. The bodies that manage the justice system in Poland are passive in terms of verifying the competence of experts when entering them in the lists of experts, and the procedural bodies handling court cases are not properly prepared to assess evidence (e.g. they do not attach sufficient importance to the information on the accuracy of the methodology used by an expert).

On the other hand, it is worth noting that the role of conducting empirical research in the field of graphopsychology in Poland is underestimated, both by scientific university centers dealing with psychology and forensic centers conducting research on handwriting. In the light of the problems described above, at present, the application of this knowledge in issuing opinions in criminal or civil cases raises many doubts. These methodologies require in-depth empirical studies that are methodologically correct. The application of methodologies developed outside Poland requires their adjustment to the Polish population. In the authors' opinion, conducting such research is worthwhile as the findings in the field of psychological analysis of handwriting, made with the use of standardized methodologies based on empirical research with a known margin of error, may be helpful for the process decisionmakers in many situations.

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